




3 1761 11649210 9



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116492109>

Government
Publication

CAI
Z 1
-yocol

Doc
Can.
Com
C

Canada. Canadian Pacific Railway,
Royal Commission on the, 1880-82

I

REPORT

730p

18

OF THE

CANADIAN PACIFIC RAILWAY

ROYAL COMMISSION

VOLUME III

CONCLUSIONS



111633
22/5/11

OTTAWA

PRINTED BY S. STEPHENSON & CO., CHATHAM, ONT.
1882.

Vol. xii

TABLE OF CONTENTS.

	PAGE.
Introduction.....	1
Commission	26
REPORT.....	29
Preliminary remarks of Commissioners.....	29
Engineering.....	34
Surveys.....	34
do and Location	65
do and Construction.....	88
do Analysis of.....	98
Detailed Statement of Explorations and Surveys, 1871 to 1879.....	100
Contracts.....	106
Table of Expenditure.....	107
Contracts No. 1 to No. 70 in numerical order.....	111
Nixon Thomas.....	463
Fort Frances Lock Expenditure	471
Cooper, Fairman & Co.....	474
Contract Letting.....	479
Final Conclusions.....	495
Appendix	497

ERRATA.

VOLUME I.

- Page 193, question 2,921, in answer, instead of "can" read "cannot."
" 194, " 2,929, " " "harbour" read "hardware."
" 713, " 10,964, " " "there was any material" read
" "there was not any material."
" 918, question 13,493, in answer, instead of "Gorman" read "Fairman."
" 918, " 13,493, " " "Fairman" read "Gorman."

VOLUME II.

- Page 1,290, question 18,501, in answer, instead of "a person you may rely on"
read "of a person you relied on."
" 1,334, question 18,935, in question, instead of "\$16,000" read "\$216,000."
" 1,335, " 18,960, " " "\$116,000" read "\$216,000."
" 1,393, " 19,520, in answer, " "ties" read "the."

VOLUME III.

- Page 33, on 8th line, before "receiving" read "of."
" 48, on 16th line, strike out "and yet."
" 81, on 22nd line, omit "with" before "plan" and read "on the."
" 160, in price column opposite contracts 9 and 10, instead of "53.33" read "53.53."
" 186, on 23rd line, take out "the" before "Guest & Co."
" 418, on 13th line, instead of "piles" read "Piles."
" 423, on 9th line, instead of "1769" read "1879."



INTRODUCTION.

The first official step towards the Canadian Pacific Railway was taken in 1870. On the 14th August, 1869, the Colonial Secretary addressed a despatch to the Governor of British Columbia on the subject of the incorporation of that colony with the Dominion of Canada. Rupert's Land and the North-West Territory being about to be incorporated in the Dominion, the main obstacle in the way of the Imperial Government entertaining the question had been removed. A legislature drawn from an extended area could hardly fail to deal with questions comprehensively and impartially. The interest of every province of British North America would be advanced by enabling the wealth, credit and intelligence of the whole to be brought to bear on every part. Especially was this true in the case of internal transit. The difficulties in the way of union, presented by distance, were in this respect an advantage, that they would render easy communication indispensable. A copy of this despatch was forwarded on the 16th August, 1869, to His Excellency the Governor-General. After some further correspondence a delegation from British Columbia came to Ottawa and conferred with the Privy Council. The result, an Order-in-Council passed on the 1st July, 1870, submitted certain conditions as a base of political union, amongst them being the following:—

Clause 11. "The Government of the Dominion undertake to secure the commencement, simultaneously, within two years from the date of the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected east of the Rocky Mountains towards the Pacific, to connect the sea-board of British Columbia with the railway system of Canada; and further, to secure the completion of such railway within ten years from the date of the Union.

And the Government of British Columbia agree to convey to the Dominion Government, in trust, to be appropriated in such manner as the Dominion Government may deem it advisable in furtherance of the construction of the said railway, a similar extent of public lands along the line of railway throughout its entire length in British Columbia, not to exceed, however, twenty miles on each side of said line, as may be appropriated for the same purpose by the Dominion Government from the public lands in the North-West Territories and the Province of Manitoba. Provided that the quantity of land which may be held under pre-emption right or by Crown grant within the limits of the tract of land in British Columbia to be so conveyed to the Dominion Government, shall be made good to the Dominion from contiguous public lands; and provided further, that until the commencement, within two years, as aforesaid, from the date of the Union of the construc-

tion of the said railway, the Government of British Columbia shall not sell or alienate any further portion of the public lands of British Columbia in any other way than under right of pre-emption, requiring actual residence of the pre-emptor on the land claimed by him. In consideration of the land so to be conveyed in aid of the construction of the said railway, the Dominion Government agree to pay to British Columbia from the date of the Union the sum of \$100,000 per annum in half-yearly payments in advance."

Long prior to official action of any kind, the germinal idea of the Canadian Pacific Railway is to be found in the minds of the early explorers who sought a route across the continent for the purpose of facilitating intercourse with China and the East. The literature and history connected with those explorations are full of interest and instruction.

One of the earliest of those who stated the policy of a part rail and part water route, was Captain Syngé, who, in 1848 and again in 1852, pressed his views on public attention. About the same time Major Carmichael Smith published a pamphlet, and Captain F. A. Wilson and A. B. Richards, of Lincoln's Inn, a book in which a railway across British North America was advocated with great force as part of a scheme for relieving the pauperism, and decreasing the criminal population, in the United Kingdom.

Early in 1851, Mr. Allan McDonell, of Toronto, brought before the public and the Legislature of Canada, a scheme for building a railway from Lake Superior to the Pacific. He interested in his project one of the prominent statesmen of that day, the Hon. Henry Sherwood. A company was formed under the style of the "Lake Superior and Pacific Railroad Company," and on the 17th June, 1851, Mr. Sherwood obtained leave to bring in a bill to incorporate it. The main idea was that the Government should sell to a company, sixty miles wide of the lands from Lake Superior to the Pacific at a reduced rate, or at such price as should be paid the Indians for surrendering it to the Crown. He was in advance of his day, and the Standing Committee of Railways and Telegraphs, of which Sir Allan MacNab was Chairman, rejected his proposal, reporting that the application for a charter was premature. In 1853 and in 1855, Mr. McDonell returned to the charge, but on both occasions his petitions met the same fate as his bill.

On the 30th November, 1854, the Hon. A. N. Morin and others, petitioned for an Act of incorporation under the name of the "Northern Pacific Railway Company."

In 1857 a Select Committee of the English House of Commons was appointed to consider the state of the British possessions in North America under the administration of the Hudson Bay Company, or over which they

possessed license to trade. The subject of enquiry of this Committee of the Imperial Parliament does not bear directly on the Canadian Pacific Railway, but the evidence given before it by two distinguished Canadians was of such a character as to justify the reference made here.

The Hon. John Ross, who was the first witness examined, said that it was conceded by American engineers that British America afforded the most feasible route for a trans-continental railway. The admirable pamphlets alluded to could have made very little impression in Canada, for Mr. Ross testified before this Committee in 1857 that it was only during the summer of the previous year the subject of a trans-continental railway began to be discussed. "The question of the opening up of the territory has often for years been incidentally mooted, but a regular discussion of the question has never arisen until the course of the last summer, that I am aware of." Later on, in reply to questions, he dwelt on the importance of the line from an Imperial and Canadian standpoint, and with special reference to the trade of China and India. The late Chief Justice Draper was examined. He said he entertained no doubt his children would see a railway go across the country to the Pacific. He suggested that the Imperial Government should make an arrangement for the construction of the railway across the Rocky Mountains so as to avoid two colonial governments hereafter having to deal with the question, for he always found if you could foresee a difficulty it was better to anticipate and prevent it than have to deal with it after it had arisen.

On the 14th July, 1858, Mr. S. J. Dawson sent in a most valuable report on the surveys between Lake Superior and the Red River Settlement, and between the Red River and the Assineboine. Professor Hind, who made some reports about this time, afterwards published a book containing a narrative of the Red River exploring expeditions of 1857, and of the Assineboine and Saskatchewan exploring expedition of 1858. The natural advantages of the basin of Lake Winnipeg for a route across the continent is well stated in the second volume at p. 233. Hind quotes the Palliser exploration in favour of the practicability of the route.

This exploration organized by the Imperial Government was made during the years 1857, 1858, 1859 and 1860, and the journals, observations and detailed reports of Capt. Palliser and his colleagues have proved most valuable, and by prominent engineers examined before this Commission, have been referred to in a marked manner, and so as to suggest that they

had formed a hand-book in the earlier surveys in connection with the Canadian Pacific Railway.

The objects for which the Imperial Government sent out an expedition, were to obtain information relative to a route favourable for emigration; for this and other purposes, to ascertain the nature of the country westward of Red River and the elbow of the Saskatchewan; to find a pass or passes across the Rocky Mountains, north of the boundary line and south of a point not far from the Boat Encampment.

On the 23rd July, 1858, they arrived at 8 o'clock a.m. at the Nick Hills, where they obtained their first view of the Rocky Mountain Chain, which, to the north, appeared on the horizon like a blue line, while to the south they rose more distinct, higher, and more massive, "their summits clad in snow, which glittered at intervals like silver crowns." On the 18th of August, 1858, with a party of four men and nine horses, they made their journey through the Kananaskis Pass. Later in the same month Dr. Hector passed through Kicking Horse Pass. Captain Palliser, as Mr. S. J. Dawson at a later period pointed out, was favourably impressed with the British Kootanie Pass. Dr. Hector explored Howse Pass, which, having crossed, he found himself in the Valley of the Columbia, with a rocky mountainous country on either side.

With the formation of British Columbia into a colony a yet stronger impulse was given to the forces tending towards a railway across British North America, and several able pamphlets from the pens of persons interested in British Columbia appeared.

The most striking of these was a handbook on British Columbia, published anonymously in 1858, in the concluding portions of which were given extracts from leading English statesmen. The following occurs in an extract from a speech of Mr. Roebuck :—

"Plans had been laid before the Right Hon. Baronet, the Secretary for the Colonies (Sir E. B. Lytton), for carrying a railway completely across the continent, so that a direct communication would be established between England and Vancouver's Island by way of Halifax. This was a magnificent scheme; and he would tell the Right Hon. Baronet that if he succeeded in carrying out the scheme he would achieve a renown that would hand his name down to posterity as a great Colonial Minister."

Mr. Roebuck, on the occasion on which the speech was made, from which the above is an extract, was followed by Viscount Bury, Sir E. Bulwer Lytton, Mr. Gladstone and Lord John Russell, all of whom heartily approved of his views.

The handbook gives the proposal :—

“For carrying a railway from the head of Lake Superior through the Red River Settlement (about to be formed into a colony) and along the Valley of the Saskatchewan, and through British Columbia to the mouth of the Fraser River, opposite Vancouver's Island”; also from Halifax to Quebec.

A small map is appended to this handbook showing the projected line, much the same as the line surveyed by Mr. Fleming in 1871, and now under construction. From Ottawa it is drawn to Red River, to the south of Lake Manitoba, and then by the Valley of the Saskatchewan to the mouth of the Fraser River. There is a branch drawn from this main line from Red River to Fort William on Lake Superior, and another from Mattawa to the Georgian Bay.

The main line crosses the Columbia River twice about on a line with the Howse Pass. With the exception of the Rocky Mountain Pass the line proposed looks very much like the reality.

In 1858 the Provincial Legislature of Canada incorporated “The North-West Transportation, Navigation and Railway Company,” with extensive and multifarious powers, but for reasons not apparent on the surface it never accomplished anything worthy of record.

In the Speech from the Throne, at the opening of the Canadian Parliament, on the 14th of August, 1863, there occurs the following passage :—

“I have received a despatch from the Secretary of State for the Colonies, enclosing copies of a correspondence between Her Majesty's Government and the Agent of the ‘Atlantic and Pacific Transit and Telegraphic Company,’ in reference to a proposal made by that Company for the establishment of a Telegraph and Postal communication between Lake Superior and New Westminster, in British Columbia. The importance of such an undertaking to the British North American Provinces, both in a commercial and in a military point of view, induces me to commend the subject to your consideration. Copies of the correspondence shall be laid before you, and I feel assured that, should any proposal, calculated to effect the establishment of such communication, on terms advantageous to the Province, be submitted to you, it will receive encouragement at your hands.”

In 1868, Mr. Alfred Waddington, a distinguished engineer, and a man deeply interested in British Columbia, brought his views on the subject of the building a Canadian Pacific Railway before the British public. On the 9th of March, 1868, he read a paper before the Royal Geographical Society, in which he ably stated the whole case, and with a knowledge of the country so accurate and authoritative as might well excite admiration and surprise. In this paper, and in a pamphlet published shortly afterwards, like a practical man he with facts disposes of the difficulties in the way of

the enterprise. The port to which he directed his line was Bute Inlet, his main points being Ottawa, Fort Garry, Yellow Head Pass and Bute Inlet. The passage in which he tabulated the various passes indicated an assured knowledge and well grounded confidence.

Until his death Mr. Waddington was full of the idea of building the railway; and on the 24th of March, 1871, he and Mr. William Kersteman presented a petition to the Canadian Parliament, praying for an Act of incorporation under the name of the "Canadian Pacific Railway Company." He had a bill introduced and printed.

On the 17th of March, 1870, was read the petition of Charles P. Treadwell and others, praying for an Act of incorporation under the name of the "Canadian Pacific Railway and Navigation Company," with power to construct a railway from Ottawa through the Red River Territory and Rupert's Land to the Pacific Ocean, at Bute Inlet; also for the interposition of the House in their behalf, to assist them in obtaining a grant of wild lands in aid of their undertaking.

It may be worth here recording that Mr. Allan McDonell and many other projectors fixed on Fucas Straits, or what we now know as Burrard Inlet, as the objective point on the Pacific.

In January, 1871, the Legislative Council of British Columbia, which had been considering the action taken in the preceding year in Ottawa, adopted an Address to Her Majesty, representing that British Columbia was prepared to enter into the Union with the Dominion of Canada, on terms which were substantially the same as those agreed on between the British Columbia Delegation and the Dominion Privy Council in the previous year. The Address was, on the 23rd January, sent by the Lieutenant Governor of British Columbia to the Governor General of Canada.

On the 17th of March, 1871, agreeably to a recommendation of His Excellency the Governor General of Canada, a series of resolutions respecting the admission of British Columbia into the Union with Canada were referred to a Committee of the Whole House, and on the 30th of the same month the House of Commons of Canada in committee concurred in the terms and conditions of Union set forth in the above-mentioned Address, and resolved that an Address should be presented to Her Majesty under the 146th clause of the British North American Act, 1867, to unite British Columbia with the Dominion of Canada on the said terms and conditions. On the 31st the resolutions were reported, read a second time and agreed to, and a Select

Committee was appointed to draw up an Address to Her Majesty, embodying said resolutions, which was passed at the next sitting.

On the 16th of May, 1871, the terms of Union between the Dominion of Canada and British Columbia were confirmed by Her Majesty in Council, and union directed to take effect on the 20th of July, 1871.

On the 24th March, 1871, was read a petition from Alfred Waddington and Wm. Kersteman praying for an act of incorporation under the name of the "Canada Pacific Railway Company."

On the 11th of April, 1871, Sir Geo. E. Cartier moved, seconded by Mr. (now Sir Leonard) Tilley, that the House resolve itself into a Committee to consider the following resolution:—

"That the railway referred to in the Address to Her Majesty concerning the Union of British Columbia with Canada, adopted by this House on Saturday the 1st of April inst., should be constructed and worked by private enterprise and not by the Dominion Government, and that the public aid to be given to secure that undertaking should consist of such liberal grants of land, and such subsidy in money or other aid, not increasing the present rate of taxation, as the Parliament of Canada shall hereafter determine."

The House having resolved itself into Committee and the resolution having been reported, was read a second time and agreed to.

On the 13th of March, 1871, on a memorandum of the Minister of Public Works recommending the organization of a survey in view of the contemplated extension of the railway system of British North America from the Atlantic to the Pacific, an Order in Council was passed authorizing the Minister to organize for survey parties along the route of the proposed Railway Extension (1) between the Valley of the Ottawa and Nipigon; (2) between Nipigon and Fort Garry; (3) between Fort Garry and the Rocky Mountains; (4) between the Rocky Mountains and the Pacific Ocean.

For the fiscal year ending 30th June, 1871, the sum of \$250,000 was appropriated for the Canadian Pacific Railway, of which the sum of \$30,148.32 was expended.

On the 26th of April, 1872, Sir George E. Cartier obtained leave to bring in a bill respecting the Canadian Pacific Railway. The bill was read a first time and ordered for second reading on the following Tuesday.

On the 29th of April, 1872, a petition of the Hon. D. L. Macpherson and others was presented praying for an Act of incorporation under the name of the "Interoceanic Railway Company of Canada," and on the same day a

petition of Sir Hugh Allan and others was presented praying for an Act of incorporation under the name of the "Canada Pacific Railway Company." Bills on the above petitions were introduced on the 30th April and passed through the different stages, and in due course became law.

On the 7th of May, 1872, the House resolved itself into Committee to consider certain resolutions respecting the Canadian Pacific Railway. The resolutions were recommitted on the 21st and ordered to be reported. There were eight resolutions, the first affirming the expediency of providing for the construction of the said railway; the second relating to the extent between some point near Lake Nipissing and some point on the Pacific Ocean, and the sixth fixing the gauge at four feet eight inches and a-half. The third, fourth, fifth, seventh and eighth resolutions were as follows:—

"3. That the whole line of such railway be constructed and worked by one Company, to be approved of and agreed with by the Governor in Council, and be commenced within two years and completed within ten years from the admission of British Columbia into the Dominion.

"4. That the land grant to such Company to secure the construction and working of the railway, shall not exceed fifty million acres, in blocks of twenty miles in depth on each side of the line of the railway in Manitoba, the North-West Territories and British Columbia, alternating with blocks of like depth reserved for the Government of the Dominion, and to be sold by it, and the proceeds of such sale applied towards reimbursing to the Dominion the sums expended by it on the construction of the said railway; such lands to be granted from time to time as any portion of the railway is completed, in proportion to the length, difficulty of construction and cost of such portion, and in Ontario such land grant to be subject to the arrangement which may be made in that behalf by the Government of the Dominion with the Government of that Province: provided that, if the total quantity of land in the alternate blocks to be so granted to the Company should be less than fifty million acres, then the Government may in its discretion grant to the Company such additional quantity of land elsewhere as will make up, with such alternate blocks a quantity not exceeding fifty million acres; and in the case of such additional grant, a quantity of land elsewhere equal to such additional grant shall be reserved and disposed of by the Government for the same purposes, as the alternate blocks to be reserved as aforesaid by the Government on the line of the railway.

"5. That the subsidy or aid in money to be granted to such Company be such sum not exceeding thirty million dollars in the whole, as may be agreed upon between the Government and the Company, such subsidy to be granted from time to time by instalments as any portion of the railway is completed in proportion to the length, difficulty of construction and cost of such portion; the company allowing the cost of the surveys of the line in 1871-72, as part of such subsidy; and that the Governor in Council be authorized to raise by loan such sum as may be required to pay such subsidy.

"7. That the Government may make such agreement as aforesaid with any Company, approved by the Governor in Council, and being incorporated with power to construct a railway on a line approved by him, from Lake Nipissing to the Pacific Ocean; or, that if

there be two or more such companies having power singly or together to construct such railway, they may unite as one Company, and such agreement may be made with the united Company, or, that if there be no such Company with whom the Government deems it advisable to make such agreement, and there be persons able and willing to form such Company, the Governor may by charter incorporate them, and make such agreement with the Company so incorporated.

" 8. That the Government may further agree with the Company with whom such agreement as aforesaid shall have been made, to construct and work a branch line of railway from some point on the main line in Manitoba to some point on the boundary line between that province and the United States, to connect with the system of railways in the said States, and another branch line from some point on the main line to some point on Lake Superior, in British Territory; and that such branch lines shall be deemed part of the said Canadian Pacific Railway, and a land grant in aid thereof may be made by the Government to such extent as may be agreed upon between the Government and the Company, not however to exceed 20,000 acres per mile of the branch line in Manitoba, nor 25,000 acres per mile in the branch line to Lake Superior."

A Bill embodying these resolutions became law on the 1st June, 1872, under the title of "An Act respecting the Canadian Pacific Railway, 35 Vic., cap. 71."

For the fiscal year ending 30th June, 1872, \$250,000 more was appropriated, which made, together with the balance of the previous year, \$469,851.68, the expenditure exceeding the appropriation by \$19,576.48, having been in effect \$489,428.16.

On the 31st of Jan., 1873, His Excellency the Governor General in Council approved of a report of a Committee of the Honourable the Privy Council, recommending that, as the Interoceanic Railway Company, and the Canada Pacific Railway Company would not unite, a company should be incorporated under the 15th sec. of the Canadian Pacific Railway Act (35 Vic., cap. 71) by charter, for the construction and working of the Pacific Railway, and further recommending that negotiations for that purpose should be opened with certain gentlemen who were ready to enter into an agreement for the above purpose.

On the 5th Feb., 1873, the charter was signed by the Governor General by the provisions of which a company, at the head of which was Sir Hugh Allan, bound themselves to build the railway within ten years from the 20th July, 1871, in consideration of which they were to receive a land grant of 50,000,000 acres, and a subsidy of \$30,000,000, payable from time to time in instalments.

The Governor General, on the 13th of March, 1873, communicated to the House of Commons, by Message, that he had granted a charter

to a body of Canadian capitalists for the construction of the Canadian Pacific Railway: said message was also accompanied by papers and correspondence relating to the subject, and a communication from the Government showing the futile efforts which had been made to bring about an amalgamation between the Inter-oceanic Railway Company of Canada and the Canada Pacific Railway Company.

On the 31st of March, 1873, Sir John A. Macdonald laid before the House correspondence on the subject of Kersteman's scheme for the construction of the Canadian Pacific Railway.

In consequence of a motion made on the 2nd of April, 1873, by the Hon. Lucius Seth Huntington, concerning the Canadian Pacific Railway, and which alleged amongst other things that he believed that an understanding had been entered into between the Government and gentlemen named by him, concerning the contract for the construction of the said railway, which was negatived;

The Right Hon. Sir John Macdonald, on the 8th of April, moved for a Committee to investigate and report on the several matters contained in Mr. Huntington's motion. The motion was carried.

A bill enabling the Committee to receive evidence under oath having been disallowed, His Excellency the Governor General wrote to Sir John Macdonald suggesting a Royal Commission in order to get over the difficulty.

On the 13th of August Parliament met and was prorogued.

On the 14th of August a Royal Commission was issued to the Hon. Charles Dewey Day, the Hon. Antoine Polette, and James Robert Gowan, Esq., to enquire into the matters and statements made by the Hon. Lucius Seth Huntington.

The Commission met at Ottawa on the 18th of August, 1873, and closed its sittings on the 1st of October. The terms of the Commission did not require the Commissioners to express their opinion. In their report they describe the course of the enquiry, and point to the evidence contained in thirty-six depositions.

On the 23rd of October, 1873, Parliament met.

The Speech from the Throne contained these words:

"The Canadian Pacific Company, to whom a Royal Charter was granted, have, I regret to say, been unable to make the financial agreements necessary for the construction of that

great undertaking. They have, therefore, executed a surrender of their charter, which has been accepted by me. You will, I trust, feel yourselves called upon to take steps to secure the early commencement and vigorous prosecution of that railway, and thus to carry out in good faith the arrangement made with the Province of British Columbia. A measure for this purpose will be submitted for your consideration."

On the 7th of November, the Ministry having resigned during the debate on the Address, Parliament was prorogued.

The amount spent on the Pacific Railway for 1872-73 was \$561,818.44, as per Public Accounts, the sum appropriated being \$600,000.

Parliament met on the 26th of March, 1874. In the Speech from the Throne the Members of the Senate and House of Commons were told :

"The enactment of 1872, respecting the Canadian Pacific Railway, having failed to secure the prosecution of that great enterprise, you will be called upon to consider what plan will best and most speedily provide the means of transcontinental communication with British Columbia. A report of the Chief Engineer will be laid before you, showing what progress was made during the past year in the surveys connected with the proposed line."

On the 28th of April, Mr. (now Sir Richard) Cartwright, seconded by the Hon. Mr. Dorion, moved the House into Committee to consider resolutions affirming the expediency of authorizing the raising, by way of loan, for the purpose of the construction of the Canadian Pacific Railway and the improvement and enlargement of the canals, a sum of money not exceeding £8,000,000 sterling. The resolutions were agreed to on the 5th of May, and a bill was introduced founded on the same, which became law. (37 Vic., cap. 2)

During the session of 1874 an Act was passed intituled "An Act to provide for the construction of the Canadian Pacific Railway" (37 Vic., c. 14) which provided that the railway might be built as a Government work or by a subsidized company. The line was by this Act divided into four sections and two branches: the branches from the eastern terminus to Georgian Bay, and from Fort Garry to Pembina; the four sections: (1) From Lake Nipissing to Lake Superior; (2) from Lake Superior to Red River; (3) from Red River to some point between Fort Edmonton and the foot of the Rocky Mountains; (4) from the western terminus of the third section to the Pacific. As soon as practicable, after the location of the line should be determined on, a line of electric telegraph was to be constructed in advance of the railway and branches, along their whole extent respectively. Should the work be built by a company or companies,

\$10,000 per mile in monthly instalments, as the work progressed, was to have been paid, and land was to have been given, not exceeding 20,000 acres, for each mile in alternate sections of twenty square miles along the line of the railway or at convenient distance from it.

Section 11 provided that no contract for any portion of the main line should be binding until it should have been laid before the House for a month, or should have been approved by a resolution of the House.

Section 12 provided for building the line as a Government work. In this case the construction was to have been let out by contracts offered to public competition.

Sections 13 and 16 provided for the building of the branches either as a public or by private enterprise.

Section 14 provided for the granting of a bonus or bonuses to existing lines, not exceeding \$12,000 per mile so as to secure the construction of the branch lines extending from the eastern terminus of the Canadian Pacific Railway to connect with existing or proposed lines of railway.

The expenditure on the railway for 1873-74 was \$310,224 88, the amount authorized being \$538,181 50.

British Columbia, feeling that she had some ground of grievance because of the non-fulfilment of the conditions of Union, Mr. Edgar was in February, 1874, sent to British Columbia. His mission being unsuccessful he was recalled. Mr. Walkem proceeded to London as a delegate from British Columbia. The result of much negotiation was that Lord Carnarvon suggested that both Governments should accept him as arbitrator. In an Order in Council passed on the 23rd July, 1874, in which the Committee of Council "advise that Lord Carnarvon be informed they would gladly submit the question to him, whether the exertions of the Government, the diligence shown and the offers made have, or have not, been fair and just and in accordance with the spirit of the agreement," negotiations were prolonged, and in a despatch to the Earl of Dufferin, dated the 17th November, 1874, Lord Carnarvon announced the conclusions at which he had arrived, namely:

"1. That the railway from Esquimalt to Nanaimo shall be commenced as soon as possible and completed with all practicable despatch.

"2. That the surveys on the mainland shall be pushed on with the utmost vigour. On this point, after considering the representations of your Ministers, I fear that I have no alternative but to rely, as I do most fully and readily, upon their assurances that no legitimate

effort or expense will be spared, first to determine the best route for the line, and secondly, to proceed with the details of the engineering work. It would be distasteful to me, if indeed, it were not impossible to prescribe strictly any minimum of time or expenditure with regard to work of so uncertain a nature; but happily, it is equally impossible for me to doubt that your Government will loyally do its best in every way to accelerate the completion of a duty left freely to its sense of honour and justice.

"3. That the waggon road and telegraph line shall be immediately constructed. There seems here to be some difference of opinion as to the special value to the Province of the undertaking to complete these two works; but after considering what has been said, I am of opinion that they should both be proceeded with at once, as is indeed suggested by your Ministers.

"4. That \$2,000,000 a year, and not \$1,500,000, shall be the minimum expenditure on railway works within the Province from the date at which the surveys are sufficiently completed to enable that amount to be expended on construction. In naming the amount I understand that, it being alike the interest and wish of the Dominion Government to urge on with all speed the completion of the works now to be undertaken the annual expenditure will be as much in excess of the minimum of \$2,000,000 as in any year may be found practicable.

"5. Lastly, that on or before the 31st of December, 1890, the railway shall be completed and open for traffic from the Pacific seaboard to a point at the western end of Lake Superior at which it will fall into connection with existing lines of railway through a portion of the United States, and also with the navigation on Canadian waters. To proceed at present with the remainder of the railway extending, by the country northward of Lake Superior, to the existing Canadian lines, ought not, in my opinion, to be required, and the time for undertaking that work must be determined by the development of settlement and the changing circumstances of the country. The day is, however, I hope not very distant when a continuous line of railway through Canadian territory will be practicable, and I therefore look upon this portion of the scheme as postponed rather than abandoned."

Subsequently, (20th Sept., 1875) an Order in Council was passed respecting terms with British Columbia, which led to further negotiations

On the 3rd March, 1875, Mr. Mackenzie laid before the House articles of agreement entered into between Asa Belknop Foster and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, for the construction and working of the Georgian Bay Branch of the Canadian Pacific Railway, bearing date the 27th Feb., 1875.

On the 13th March, 1875, upon the question that this House doth concur with the Committee (of Supply) in the following resolution:—

"That a sum not exceeding \$6,250,000 be granted to Her Majesty to defray expenses of Pacific Railway, viz.:—Telegraph line and construction of roadway \$1,000,000; steel rails and fastenings, \$2,000,000; Pembina Branch, \$500,000; Fort Shebandowan, \$500,000; Georgian Bay Branch, \$500,000; Esquimalt to Nanaimo, \$500,000; Mainland to Columbia, \$250,000; Locks at Fort Francis, \$150,000; Rainy Lake and Shebandowan, \$540,000; Manitoba and

Saskatchewan, \$50,000; Steamers, River Saskatchewan, and improvements in rapids, \$60,000; Lake of the Woods to Red River, \$500,000. for the year ending 30th June, 1876."

Mr. (now Sir Charles) Tupper moved in amendment, seconded by Mr. Pope, that the following words be added :—

"That in view of the engagements entered into during the past Session between the Government of Canada and the Imperial Government and British Columbia, to build a railway without delay from Nanaimo to Esquimalt, on Vancouver Island; to expend not less than \$2,000,000 per annum, in British Columbia, on the Canadian Pacific Railway, and to complete the construction of the line from the Pacific Ocean to the shores of Lake Superior in 15 years; this House is of opinion that no time should be lost in beginning the eastern portion of the Canadian Pacific Railway, and constructing it as rapidly as is consistent, with a due regard to economy, from a point fixed by Parliament at a point near to and south of Lake Nipissing, westward to Lake Nepigon, and thence to Red River, commencing at Lake Nepigon, and working eastward and westward, and that Government should employ the available funds of the Dominion in the first place in the completion of that great national work. A continuous railway on Canadian territory by the shortest route from the Atlantic to the Pacific Ocean."

Which amendment passed in the negative; and the question being again proposed, Mr. Masson moved an amendment which was withdrawn, when the resolution was agreed to.

On the 4th of November, 1874, an Order-in-Council was passed advising that a subsidy of \$12,000 per mile be granted to the Canada Central Railway Company under the terms of the Act 37 Vic., cap. 14, providing for the construction of the Canadian Pacific Railway, said grant to aid in constructing their line from Douglas west to the eastern end of the branch railway proposed to be built from Georgian Bay.

On the 13th of March, 1875, Mr. Mackenzie moved the ratification of the said Order;

Mr. Masson moving an amendment to the effect that no contract should be entered into with any company for the construction of the Georgian Bay Branch of the Canadian Pacific Railway, nor any subsidy granted until a thorough and complete instrumental survey should have been made of the route proposed. The amendment was defeated, and the main question was resolved in the affirmative.

On the 31st March, 1875, Mr. (now Sir Charles) Tupper moved an address to His Excellency, praying for copies of specifications and contracts for any portion of the Canadian Pacific Railway telegraph, with correspondence.

Mr. Bowell moved an amendment to add the words: "and this House regrets that contracts have been made by the Government for the construc-

tion of the line of telegraph from Lake Superior to Cash Creek, before the location of the Canadian Pacific Railway has been determined on."

To this amendment, on the 2nd April, Mr. Kirkpatrick moved in amendment to add the words: "contrary to the Statute authorizing the construction of the said telegraph line, and therefore this House does not approve of the said contracts." Both amendments passed in the negative. Then the main question having been put, the address was ordered to be presented.

On the 3rd of April, 1875, Mr Mackenzie laid before the House the contracts 13 and 14, in connection with the Canadian Pacific Railway, for the grading and bridging from Red River to Lake of the Woods, containing bills of works, general specifications and conditions of contract; and for the grading and bridging from Fort William to Shebandowan.

On the 3rd of April, 1875, Hon. Mr. Mackenzie moved that the House ratify the contract proposed to be entered into with Messrs. Sifton & Ward, for that portion of the Pacific Railway extending from Fort William to Shebandowan, a distance of about forty-five miles, at a cost of \$406,194.

Mr. (now Sir Charles) Tupper, seconded by Sir John Macdonald, moved that the consideration of the approval of the said contract be postponed to this day three months, which was passed in the negative after a division. The House then divided on the main question, when it passed in the affirmative.

On the same day the Government were authorized to enter into a contract, during the recess, for the construction of that portion of the Pacific Railway from Rat Portage to Cross Lake, thirty-seven miles.

The expenditure on the railway for 1874-75 was \$1,546,241.67, the amount authorized being \$2,650,000.

On the 20th of September, 1875, an Order-in-Council was passed, in which it was stated that the Committee of Council had had under consideration the difficulties arising out of the agreement made in 1871 for the construction of the Canadian Pacific Railway, the conditions of which were quite impracticable of fulfilment; that it had been agreed that after location, \$2,000,000 should be expended yearly upon construction in British Columbia, and that a railway from Esquimalt to Nanaimo should be built; that every step in the negotiations leading to this result was subject to the condition that the existing rates of taxes should not be increased; that there were obvious

reasons, under ordinary circumstances, against the Canadian Government building a line from Nanaimo to Esquimalt, which really formed no part of the line of the Canadian Pacific Railway, and was purely a local work; that the bill for building this railway was thrown out in the Senate; that it was reasonable British Columbia should herself construct this work, and that \$750,000 would be a liberal compensation for not going on with the work.

On the 6th of December, 1875, the Privy Council of British Columbia declared that they dissented from the views of the Order-in-Council described above, and refused the offer made.

Early in 1876, the members of the Legislative Assembly of the Province of British Columbia, in session assembled, petitioned Her Majesty, reciting the petition of the British Columbia Government of 1874, the Carnarvon settlement, the assent as they alleged thereto of the Dominion Government, and stating that the Dominion Government had "almost wholly" disregarded the terms of the said settlement, the promised commencement of the railway not having taken place either on the island or on the mainland, nor had the agreement in the settlement for the immediate construction of the Provincial section of the Trans-Continental Telegraph Line been carried out. The Minute of the Privy Council of Canada of the 20th September, 1875, is then referred to, and it is pointed out that the Dominion Government in the said Minute affirmed that the section of the railway on Vancouver Island is not part of the Pacific Railway, but was offered to British Columbia in compensation for local losses caused by delays in the construction of the Pacific Railway, whereas no such offer was ever made or even suggested to the Province of British Columbia; "that the Dominion Government state in their Minute of the 20th September last, that it cannot be too clearly understood that they will not abide by or observe the agreements in the settlement for an annual railway expenditure of \$2,000,000 in the Province, and for the completion of the railway from the Pacific to Lake Superior by the year 1890, if the performance of such agreements should interfere with the conditions of a resolution passed by the House of Commons in 1871, after our terms of Union had been assented to by that body. The terms of this resolution were in effect that the railway should be constructed and worked by private enterprise and not by the Dominion Government; and that subsidies in land and moneys to an extent that would not increase the rate of Dominion taxation, should be given in aid of the work by the Government;" but in 1874 the terms of said resolution

were abandoned, rate of taxation was increased, and the construction of railway undertaken by Government; the offer of \$750,000 as cash bonus for foregoing the fixed term for completion of the Railway and the agreements for a yearly expenditure, and the refusal of the offer having been set out, the original terms of Union are recited, and the prayer asks that the Dominion Government be moved to immediately carry out the terms of the Carvornon settlement.

On the 13th of March, 1876, an Order-in-Council was passed reviewing the whole controversy with British Columbia, denying some of the conclusions of the above petition, and concluding:—"It remains only to endeavour to construct the Pacific Railway as rapidly as the resources of the country will permit."

On the 3rd April, 1876, Mr. Mackenzie presented a return to an address for a statement of the tenders received for the construction of a line of telegraph in connection with the Pacific Railway, showing the names of the parties tendering, the amount asked by each such party, and the names of the sureties; also copies of the contract between the Government and F. Barnard, Esq., in relation to the construction of the said line of telegraph.

On the 7th of April, 1876, Mr. Young reported from the Committee of Supply, several resolutions which read as follows:—

"1. *Resolved*, That a sum not exceeding two million eight hundred and ten thousand dollars be granted to Her Majesty, to defray expenses of Pacific Railway for the year ending 30th June, 1877.

"2. *Resolved*, That a sum not exceeding five hundred thousand dollars be granted to Her Majesty, to defray expenses of Pacific Railway Survey and Engineering, for the year ending 30th June, 1877.

The first resolution being read a second time,

Mr. Ross (Middlesex) moved, seconded by Mr. Sinclair, and the question being put, that the words "and while granting this sum, this House desires to record its view that the arrangements for the construction of the Canadian Pacific Railway, should be such as the resources of the country will permit without increasing the existing rates of taxation," be added to the end thereof; the House divided: and the names being called for, the numbers were, yeas 149; nays 10.

On the 8th of April, 1876, the second resolution being read a second time Mr. Plumb moved, seconded by Mr. Kirkpatrick, and the question being put, that the words "that while concurring in this vote, this House desires

to record its opinion that the country is pledged to the construction of the Pacific Railway in its agreement with British Columbia, and that it is in accordance with that agreement, and with the public interest, that the surveys should be energetically proceeded with, in order that the construction of the road should be prosecuted as rapidly as the resources of the country will permit without adding to the burdens of taxation," be added at the end of the said resolution ; the House divided : and the numbers were, yeas 36 ; nays 89.

So it passed in the negative.

The said resolution was then agreed to.

On the 11th of April, on motion of Hon. Alex. Mackenzie, seconded by Mr. Blake,

" Resolved, That the Government be authorized to enter into contracts during the recess with parties sending in the lowest available tenders for the works of construction of the following portions of the Canadian Pacific Railway, viz. :—From Fort William westward towards Lac des Mille Lacs, and the crossing of Steel River ; from Rat Portage to Cross Lake."

Expenditure 1875-6, \$3,346,567.06 ; authorized, \$6,250,000.

On the 28th February, 1877, in consequence of motions by Mr. McCarthy and Mr. Kirkpatrick, an address was ordered to be presented to His Excellency the Governor General asking for papers relative to the construction of the Georgian Bay Branch and specially for a statement of the service or services for which the sum of \$109,000.50 had been paid to A. B. Foster on account of that contract ; also for evidence that the Canada Central Railway Company had provided sufficient means with the Government bonus to secure the completion of the line on or before Jany., 1877 ; also for statements as to payments and the value of rails delivered at any point of the said line, &c.

On the 26th March, 1877, Mr. Mackenzie laid on the table copies of contracts entered into for construction of the Canadian Pacific Railway.

On the 10th of April, 1877, on the motion that Mr. Speaker leave the chair, Mr. Kirkpatrick moved an amendment condemning as unconstitutional and a violation of the Act of 1874 the building of Fort Frances Lock, as a work of the Dominion, by time work. The motion passed in the negative.

On the 21st of April, on the motion that the Speaker leave the chair, Mr. Tupper moved that that House could not approve of the course taken by the Government with respect to the Canadian Pacific Railway, which passed in the negative on the 24th.

The expenditure on the railway during 1876-77 was \$1,691,149.97, \$3,310,000 being authorized.

On the 5th of March, 1878, Mr. Mackenzie presented a return to an address for a copy of any reports in possession of the Government made in 1877 by Admiral de Horsey respecting the port or ports most suitable for a terminus of the Canadian Pacific Railway in British Columbia, with correspondence.

On the 4th of April, 1878, a bill to amend "the Canadian Pacific Railway Act of 1874" was read a second time. This bill was amended in the Senate, and the Commons not agreeing with the amendments of the Senate it dropped.

On the 18th April, 1878, an Order in Council was passed which, having recited the Georgian Bay Branch contract with Mr. Foster in 1874, and its cancellation in 1876; the Order in Council of the 4th of November, 1874, granting a subsidy to the Canada Central Railway, the advised pause in the work in consequence of the lapse of the Georgian Bay Branch contract; certain reports; a letter from the Canada Central Company, dated the 10th Feb., 1877, proposing to build the westward extension from Pembroke to the south-east corner of Lake Nipissing, for a total bonus of \$1,440,000; a letter from Mr. Fleming saying his information would go to show that a line with more favorable gradients might be obtained on the route now proposed to be adopted by the Canada Central, and that it would serve the interests of the country fully as well, as the line to which it was a proposed alternative; a resolution of the House of Assembly of the Province of Quebec, in favour of a junction at Pembroke; having recited these, the Order in Council recommended that the proposal of the Canada Central should be accepted, the Company within three months from the ratification of the Order in Council, to satisfy the Minister of Public Works that they had entered into a *bonâ fide* contract for the building of the Railway.

This Order in Council having been laid before the House, on the 24th of April, on the 7th of May, on the motion of Mr. Mackenzie, was ratified.

The expenditure on the Pacific Railway during 1877-8, was \$2,228,373.13, the sum authorized being \$2,679,900.

On the 13th March, 1879, Mr. (now Sir Charles) Tupper laid before the House—

"Articles of Agreement entered into between Heney, Charlebois and Flood, and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, to do the excavation, track-laying, etc., of the Georgian Bay Branch of the Canadian Pacific Railway, from Station O, South River, to French River, 50 miles (37th contract).

"Also, articles of agreement entered into between Kavanagh, Murphy & Upper, and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, to do excavation, grading, track-laying, etc., of part of the Pembina Branch, between St. Boniface and Emerson, Canadian Pacific Railway (33rd contract).

"Also, agreement by Joseph Whitehead (13th Sept., 1878,) to make embankments on Sifton, Ward & Co.'s contract, No. 14, Canadian Pacific Railway, at a less cost to Government than per contract of Sifton, Ward & Co., No. 4572, accepted by the Minister of Public Works, 8th October, 1878, and further agreement by Joseph Whitehead.

Also, articles of agreement entered into between Gouin, Murphy & Upper, and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, to build a ten stall engine house on the station ground at Selkirk, Manitoba, for the Pembina Branch of the Canadian Pacific Railway (40th contract).

And also, agreement entered into between George Stephen and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, respecting running powers over the Pembina Branch, Canadian Pacific Railway.

On the 21st March, 1879, Mr. Tupper presented:—

"Articles of agreement entered into between Fraser, Manning & Co. and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, to do the excavation, grading, bridging, ballasting, track-laying, &c., from Eagle River to Keewatin, 67 miles, on the line of the Canadian Pacific Railway (B) contract No. 42.

"Also, articles of agreement entered into between Thomas Marks, John Ginty, P. Purcell and H. Ryan and Her Majesty Queen Victoria, represented by the Minister of Public Works of Canada, to do the excavation, grading, bridging, ballasting, track-laying, &c., from English River to Eagle River, 118 miles, on the line of the Canadian Pacific Railway (A).

"And, also, schedules of tenders, for contracts, Canadian Pacific Railway, viz.:—Schedule A, from English River to Eagle River, 118 miles: schedule B, from Eagle River to Keewatin, 67 miles, and schedule C, from English River to Keewatin, 185 miles."

On the 30th of April, 1879, Mr. Tupper, laid before the House:—

"Agreement between Joseph Upper, Benjamin W. Folger, James Swift and Matthew H. Folger, under the name and firm of 'Joseph Upper & Co.,' and Her Majesty the Queen, represented by the Minister of Public Works of Canada, to equip and work the Pembina branch of the Canadian Pacific Railway, in lieu of Government, under agreement of 3rd August, 1878, of George Stephen and St. Paul & Pacific Railway Company."

On the 8th of May, 1879, several resolutions were reported from Committee of Supply for Pacific Railway purposes, the total vote being \$5,910,000.

On the 10th of May, 1879, Mr. Tupper proposed the following resolutions:—

" 1. *Resolved*, That engagements have been entered into with British Columbia as a condition of Union with Canada, that a line of railway to connect the Atlantic with the Pacific shall be constructed with all practical speed.

" 2. *Resolved*, That the Pacific Railway would form a great Imperial highway across the continent of America, entirely on British soil, and would provide a new and important route from England to Australia, to India and to all the dependencies of Great Britain in the Pacific; as also to China and Japan.

" 3. *Resolved*, That reports from the Mother Country set forth an unprecedented state of enforced idleness of the working classes, and the possibility of a scheme of relief on a large scale being found indispensable to alleviate destitution.

" 4. *Resolved*, That the construction of the Pacific Railway would afford immediate employment to numbers of workmen, and would open up vast tracts of fertile land for occupation, and thus would form a ready outlet for the over-populated districts of Great Britain and other European countries.

" 5. *Resolved*, That it is obvious that it would be of general advantage to find an outlet for the redundant population of the Mother Country within the Empire, and thus build up flourishing colonies on British soil, instead of directing a stream of immigration from England to foreign countries.

" 6. *Resolved*, That in view of the importance of keeping good faith with British Columbia, and completing the consolidation of the Confederation of the Provinces in British North America, and for the purpose of extending relief to the unemployed working classes of Great Britain, and affording them permanent homes on British soil; and in view of the national character of the undertaking, the Government of Canada is authorized and directed to use its best efforts to secure the co-operation of the Imperial Government in this great undertaking, and obtain further aid by guarantee or otherwise in the construction of this great national work.

" 7. *Resolved*, That it is further expedient to provide (1.) That one hundred million acres of land and all the mineral they contain, be appropriated for the purposes of constructing the Canadian Pacific Railway. (2.) That the land be vested in Commissioners to be specially appointed, and that the Imperial Government be represented on the Commission. (3.) That all the ungranted land within twenty miles of the line of the Canadian Pacific Railway belonging to the Dominion be vested in such Commission; and that when the lands along the line of the Canadian Pacific Railway are not of fair average quality for settlement, a corresponding quantity of lands of fair quality shall be appropriated in other parts of the country, to the extent in all of 100,000,000 acres. (4.) That said Commissioners be authorized to sell, from time to time, any portions of such land at a price to be fixed by the Governor-in-Council on their recommendation at the rate of not less than \$2 per acre; and that they may be required to invest the proceeds of such sales in Canadian Government securities, to be held exclusively for the purpose of defraying the cost of the construction of the Canadian Pacific Railway.

" 8. *Resolved*, That the withdrawal for sale and settlement of lands for twenty miles on each side of the located line of the Pacific Railway, has, in part, had the effect of throwing settlements south and west of Lake Manitoba.

" 9. *Resolved*, That in the existing state of things, it is desirable to combine the promotion of colonization with railway construction on the Canadian Pacific Railway west of Red River.

"10. *Resolved*, That the Government be authorized and directed to locate a portion of the Canadian Pacific Railway from the Red River westerly, running to the south of Lake Manitoba, with a branch to Winnipeg; and if they deem it advisable to enter into a contract for expending a sum not exceeding \$1,000,000 in constructing the said railway without previously submitting the contracts to Parliament.

"11. *Resolved*. That it is expedient to make further explorations in the Peace and Pine River districts, and other sections of the country not yet examined, in order to ascertain the feasibility of a line through the largest extent of fertile territory, before beginning the work of construction in British Columbia.

"12. *Resolved*. That in the opinion of the House the selection of the Burrard Inlet terminus was premature.

"13. *Resolved*. That it is necessary to keep good faith with British Columbia, and commence the construction of the railway in that province as early as is practicable.

"14. *Resolved*. That the Government be authorized and directed to make such further explorations as they may deem necessary for the said purpose, and so soon as they finally selected and located the line, to enter into contracts for constructing a portion of the same, not exceeding 125 miles, without the further sanction of Parliament, so that the work of construction may, at latest, be commenced during the present season, and thereafter be vigorously prosecuted."

On the 15th of May, 1879, assent was given to an Act to amend "the Canadian Pacific Railway Act, 1874," embodying the main features of these resolutions.

On the same day assent was given to another amending Act, which would enable the Governor-in-Council to make certain arrangements as to the Pembina Branch.

The expenditure for 1878-79 was \$2,240,285.47, the amount authorized being \$2,949,700.

On the 16th Feby., 1880, Sir Charles Tupper laid before the House:—

"Articles of agreement entered into between John Ryan and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to do the excavation, grading, bridging, track-laying, ballasting, station building, &c., on the Colonization Railway, north-westerly from Winnipeg, Manitoba, about 100 miles, Canadian Pacific Railway.

"Also, articles of agreement entered into between Andrew Onderdonk and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to do the excavation, grading, bridging, tracklaying, ballasting, &c, from Emory's Bar to Boston Bar, British Columbia, about 29 miles (Section A) Canadian Pacific Railway.

"Also, articles of agreement entered into between Andrew Onderdonk and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to do the excavation, grading, bridging, track-laying, ballasting, &c., between Lytton and Junction Flat, about six miles above Spence's Bridge on River Thompson, British Columbia, about 28½ miles in length (Section C) Canadian Pacific Railway.

"Also, articles of agreement entered into between Ryan, Goodwin & Co. and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to do the excavation, grading, bridging, track-laying, ballasting, &c., between Boston Bar and Lytton, British Columbia, about 29 miles (Section B) Canadian Pacific Railway.

"Also, articles of agreement entered into between Andrew Onderdonk and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to do the excavation, grading, bridging, track-laying, ballasting, &c., between Junction Flat and Savona's Ferry British Columbia, about 40½ miles in length (Section D) Canadian Pacific Railway.

"Also, articles of agreement entered into between Miller Bros. & Mitchell and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to supply 700 tons of railway spikes, delivered 400 tons at Fort William and 300 tons at Montreal, for the Canadian Pacific Railway.

"Also, articles of agreement entered into between the Dominion Bolt Company and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to supply 35 tons of fish-plates, bolts and nuts at Fort William, for the Canadian Pacific Railway.

"Also, articles of agreement entered into between R. Dickson and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to erect station buildings and platforms on the Pembina Branch of the Canadian Pacific Railway.

"Also, articles of agreement entered into between Guest & Co. and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, for the supply of 10,000 tons of steel rails, &c., for the Canadian Pacific Railway.

"And, also, articles of agreement entered into between West Cumberland Iron and Steel Company, limited, and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, to supply 5,000 tons of steel rails, with copies of cablegrams and correspondence in connection with letting of the following contracts: The West Cumberland Iron and Steel Co., limited, for 2,000 tons; the Barrow Co., for 1,500 tons; the Ebbw Vale Co., for 1,500 tons, and the Patent Nut and Bolt Co. for 48 tons.

On the 10th March, 1880, Sir Charles Tupper laid before the House:—

"Articles of agreement entered into between the Barrow Hematite Steel Company, limited, and Her Majesty Queen Victoria, represented by the Minister of Railways and Canals, for the supply of 30,000 tons of steel rails, with fish plates, bolts and nuts, for the Canadian Pacific Railway.

On the 16th April, 1880, on the question that the Speaker leave the Chair, Mr. Blake moved, seconded by Sir A. J. Smith, that the public interests require that the work of constructing the Pacific Railway in British Columbia should be postponed.

This motion, on the morning of the 21st of April, 1880, was negatived on a division.

On the 5th of May, Mr. Rykert, reported from Committee a resolution embodying a substitution for the seventh of the series of resolutions relating to the Canadian Pacific Railway adopted by the House on the 12th and 13th of May last.—

“(a.) That 100,000,000 acres of land in Manitoba and the North-West Territories be appropriated for the purpose of constructing the Canadian Pacific Railway.

“(b.) That such lands shall be from time to time selected and reserved by order of the Governor in Council as railway lands, and shall be of fair average quality for settlement.

“(c.) That such lands shall be sold at prices to be fixed from time to time by the Governor in Council, but in no case at a rate of less than one dollar per acre.

“(d.) That the proceeds of such sales, after deducting the cost of survey and management, shall be devoted exclusively to the purpose of defraying the cost of the construction of the Canadian Pacific Railway.

The resolution was read a second time, and the question having been put :

Mr. Blake moved an amendment to the effect that the sales of railway lands shall be on conditions of actual settlement, which was negatived on division.

The main question then passed in the affirmative.

On the 6th of May, 1880, on the motion of Sir Charles Tupper, seconded by Sir John Macdonald, it was resolved that this House do approve of the contract for the construction of one hundred miles of that portion of the Canadian Pacific Railway commencing at the end of the 48th contract, near the western boundary of Manitoba, and extending to a point on the west side of the valley of Bird Tail Creek, which contract was laid on the table of the House on the 3rd instant.

On the 7th of May, 1880, assent was given to an “Act to amend the Acts respecting the Canada Central Railway Company,” by which the time fixed for the completion of the Railway was extended, and additional powers given and provisions made by which other lines and the Government have running powers over the Canada Central.

On the same day, assent was given to “An Act to ratify and confirm a certain agreement therein mentioned, between the Government of Canada and the Canada Central Railway Company.” The Company, by an Order in Council passed under authority of the Act of 1874, and ratified by a resolution of the House, were entitled to receive from the Government of Canada a subsidy of \$12,000 per mile, upon the extension of their line westward, to such point as might be selected by the Government as the terminus of the Canadian Pacific Railway, near Lake Nipissing. By the said Order it was provided that, the Company should have the option of substituting the payment by the Government of the interest, or part of the interest on the bonds of the Company running over such term of

years as might be approved by the Governor in Council, in lieu of the mileage subsidy. The Government agreed to assume the payment of the interest (but only until the maturity of the principal) on an issue of bonds amounting to £500,000, payable in twenty years, upon condition among other things that the sum of \$1,527,085.50 should be deposited by the Company with the Government, to be held as security for the due completion of their line, subject to certain terms and conditions, amongst these being the granting of running powers to certain lines mentioned.

The expenditure for the year ending 30th of June, 1880, was \$4,044,-522.72, the amount authorized being \$6,910,000.

N. FLOOD DAVIN.

On the 16th of June, 1880, the following Commission was issued :—

CANADA.

LORNE.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.

To all to whom these presents shall come, or whom the same may in any wise concern,—

GREETING.

Whereas, it appears from a Report of our Minister of Railways and Canals of Canada, bearing date on or about the 20th day of May, in the year of Our Lord one thousand eight hundred and eighty, among other things that an expenditure has been incurred from the month of April in the year of Our Lord one thousand eight hundred and seventy-one, down to the thirty-first day of December in the year of Our Lord one thousand eight hundred and seventy-nine, and charged to the account of the Canadian Pacific Railway, amounting to the sum of fourteen millions two hundred and eighty-seven thousand eight hundred and twenty-four dollars. That two changes in the Government of Canada have taken place during that period; that important questions have arisen and become the subject of discussion, both in and out of the Parliament of Canada, touching the propriety of and responsibility for, large expenditures connected with this work. That allegations have been made as to divers irregularities and extravagancies, neglects and other derelictions of duty on the part of the officers and others employed in the said work, and that sundry irregularities and improprieties have taken place in the obtaining of contracts for portions of said work and in the performance of the same;

And whereas, We deem it expedient in the interest of and as connected with the good government of Canada, to cause enquiry to be made into and concerning all the facts connected with such work, and the conduct and prosecution thereof from its inception to the present time;

Now know ye, that we, by and with the advice of Our Privy Council for Canada, do by these presents nominate, constitute and appoint George M. Clark, Esquire, Junior Judge of the united counties of Northumberland and Durham, Samuel Keefer, Esquire, Civil Engineer, and Edward Miall, Esquire, junior, Assistant Commissioner, Inland Revenue Department Commissioners to make enquiry into and concerning all the facts connected with and the conduct and prosecution of the Canadian Pacific Railway from its inception to the present time. And we do hereby authorize and require them to report fully, from time to time, all matters that they may think it right and proper for them to report under their Commission, and especially their conclusions as to the mode in which such work has been carried on, both from an engineering and financial point of view, and the proper discharge of their duties by all officials and others in relation to the said railway; and also as to the manner in which all contracts have been obtained and executed on the said work, and as to the payments made for and in respect of said work.

And We do hereby, under the authority of an Act of the Parliament of Canada, passed in the thirty-first year of Our Reign, chaptered thirty-eight, and intituled: "An Act respecting Inquiries concerning Public Matters," confer upon the said Commissioners the power of summoning before them and party or witnesses, and of requiring them to give evidence on

oath, orally or in writing (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners deem requisite to the full investigation of the matters into which they are appointed to examine And We do order and direct that the said Commissioners report to Our Secretary of State for Canada from time to time, or in one report, as they may think fit, the result of their enquiry.

In testimony whereof We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed :—Witness Our Right Trusty and Well-beloved Councillor, Sir JOHN DOUGLAS SUTHERLAND CAMPBELL (commonly called The Marquis of Lorne), Knight of Our Most Ancient and Most Noble Order of the Thistle, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Governor-General of Canada and Vice-Admiral of the same.

At Our Government House, in Our City of Ottawa, this Sixteenth day of June, in the Year of Our Lord One thousand eight hundred and eighty, and in the forty-third year of Our Reign.

By Command,

(Signed) J. C. AIKINS,
Secretary of State.

Z. A. LASH,
Deputy Minister of Justice, Canada.

REPORT
OF THE
CANADIAN PACIFIC RAILWAY

ROYAL COMMISSION.

To the Honourable The Secretary of State :—

We, the undersigned, having been appointed by a Royal Commission, dated the 16th of June, 1880, to make enquiry into and concerning all facts connected with, and the conduct and prosecution of, the Canadian Pacific Railway from its inception to that time,—and to report all matters that we might think it right and proper for us to report under our commission, have the honour to report as follows :—

Shortly after the issue of our commission we met at the city of Ottawa, and, preparatory to calling witnesses, took steps to inform ourselves, as well as the material at our command would permit, on the different branches of the subject referred to us.

Our first sitting for the reception of evidence under oath was on the 12th of the following August,—after due notice of the appointment for that purpose had been given in newspapers.

The public was then admitted to the place of hearing and accommodation found for the press reporters. Proceedings were commenced by the Secretary reading the commission, after which the Chairman made the following remarks :—

“The language of the commission just read, and the fact that it was accompanied by no instructions from the Crown, make it apparent that our enquiry is not to be limited to particular transactions. It is evidently intended that we should obtain from reliable data, a general knowledge of the various steps in the progress of the Canadian Pacific Railway, as well as a more thorough insight into all those matters pertaining to it which may seem to us to require explanation.

Having considered the history of this undertaking as it appears upon the published records, we proceed now to call witnesses whose evidence will be given under oath.

Some gentlemen in the interest of newspapers have applied to us at different times to ascertain definitely whether our sittings would be held with open doors. As no decision was arrived at, and as some of these gentlemen are present, it is proper to say that we, the Commissioners, are unanimous in the desire to admit the public to all our hearings, and yet, while there is every reason to suppose that our wish can be gratified, we feel it to be due to ourselves and inseparable from the responsibility which we have assumed, that we should preserve throughout our course an independence of judgment. We cannot consent, therefore, to part with this independence at the outset by laying down a rule of procedure to be followed under all circumstances and at all hazards. In fulfilling the trust committed to us, our main object must be to elicit the whole truth; compared with this the question of open or closed doors becomes insignificant. If, then, it should appear that on any occasion our end will be best attained by delaying the publication of the proceedings, we shall not hesitate for that occasion to conduct them in private.

It is probable that most of the documentary evidence necessary to be laid before us will be found in the control of some one or more of the Departments of Government, and that much of the oral testimony will be given by persons whom we can summon without difficulty. But we do not conceal from ourselves that there may be sources of important information which ought to be open to us, and which we cannot reach without the aid of others—others who will volunteer their assistance.

We are anxious to hear all the evidence that can be properly received, and that can throw light on any part of the subject referred to us, and we shall be glad to receive help from every quarter in prosecuting the investigation upon which we have entered."

We then proceeded to call witnesses, who were sworn according to the practice prevailing in courts of law.

During our investigation we have heard one hundred and seven witnesses, under oath, at different sittings, of which fifty-three were held at Ottawa, and twenty-seven at Winnipeg. The evidence of each witness was recorded by a stenographer, sworn to report it fully and faithfully in the language used.

Our hearings have been held, invariably, with open doors.

The names of the witnesses who were examined are hereto appended. No one failed to appear who was requested or summoned so to do.

In addition to what has been said by witnesses *viva voce*, Mr. Schreiber, Mr. Gamsby and Mr. Nixon have answered, in writing, interrogatories which we submitted to them, respectively; and Mr. Moberly, after being examined by us, as a witness, at Winnipeg, tendered, of his own accord, a supplementary deposition, supported by his oath, before a Commissioner of the Queen's Bench.

All the testimony under oath, except three depositions hereinafter mentioned, but including as well the said interrogatories and answers, and the said deposition of Mr. Moberly, as the evidence of witnesses who appeared before us, is contained in the accompanying volumes I and II.

The three excepted depositions are those of Mr. William Sifton, Mr. Henry W. Wynne and Mr. Albert H. Clark, which were voluntarily forwarded to us by Mr. Henry W. Sifton. As we have had no opportunity of examining these persons we do not treat their depositions as we have the regular evidence, and we place them amongst the exhibits in the appendix.

In addition to the evidence so set out we have availed ourselves of much that is documentary, including plans and printed and written papers put in as exhibits during the examinations of witnesses, as well as copies of correspondence and returns furnished at our instance by the Department of Railways and Canals, and also other documents which before the date of our commission were on record in Departments of the Government.

Of the exhibits, some either in full or to the extent that we considered them material, are set out in the body of this report; others are printed in the appendix; others are submitted herewith in manuscript as we received them.

They are numbered consecutively and in the appendix we furnish a list showing where each exhibit is now to be found.

In taking evidence we were unable to follow any prescribed order, and we called upon each occasion the witness who could be obtained with the greatest convenience.

With a view of making up for this lack of order in the evidence, and for the omission from our report of many facts proved, marginal notes pre-

pared by the Secretary, and an analytical index so arranged as to facilitate as far as possible the search for what has been said on any given matter, have been added to the text of the first two volumes.

In deciding upon the scope of our enquiry, we concluded :

(1.) That it was not our duty to criticise the principles upon which any Government had conducted any part of the public affairs ;

(2.) That the action of a Department in carrying out any business matter connected with the Railway was within our cognizance, such action having, in our opinion, the character of detail rather than of principles of administration, and this, whether the action was that of the Minister or of subordinates or of the Minister and subordinates in concert ;

(3.) That we should enquire into the dealings and conduct of all other Government employes and of private individuals so far, and so far only as they were connected with any matter pertaining to the Canadian Pacific Railway.

We consider that for the purposes of the Commission, the proof of each fact and the relation to the railway of the persons concerned in it, would have been as serviceable without as with the respective names of such persons. The nature of the case, however, as well as the publicity with which our proceedings have been conducted, leave us no alternative but to record all that has been given in evidence.

It is obvious that in the progress of this undertaking some of the steps would be of such a character as might be the subject either of a Government policy or an Engineer's judgment. When taken entirely on the responsibility of the officer, we have felt at liberty to enquire into the grounds of such action.

Some witnesses, for the purpose of corroborating their statements concerning matters in which there was a public interest, have, at their own instance, introduced testimony in regard to other matters not entirely relevant, and which we would not have called for, but as it was submitted in support of assertions on subjects within the scope of our enquiry, we have not hesitated to test the strength of such support by cross-examination.

Persons having money demands against the Government on matters connected with this railway have sometimes been permitted to show the circumstances on which such claims are based—not that we might pass on

the validity of the demand, for the respective claimants were generally informed that we did not propose to adjudge between them and the Government, but we allowed the witnesses, on these claims, to tell their stories with some latitude for the reason that in recounting all the facts they could not fail to afford us some information upon the manner in which the Government officials had been managing the railway affairs.

We have held the opinion that when private rights were not infringed it was better to err, if at all, on the side receiving more testimony than might be necessary, rather than too little.

We concluded that we were not desired to report upon matters which are patent on the journals of Parliament, such as messages, statutes, votes and resolutions, and we have made but few allusions to such subjects.

In order, however, that some account of them may be near at hand as a help to our report, we have requested the Secretary of the Commission to prepare a summary of those proceedings, which appears as an introduction.

SURVEYS.

On the 20th July, 1871, British Columbia became a part of the Dominion of Canada. By the terms of Union the Government of the Dominion undertook amongst other things to secure the commencement, simultaneously, within two years from the date of the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as might be selected east of the Rocky Mountains towards the Pacific, to connect the sea-board of British Columbia with the railway system of Canada; and further, to secure the completion of such railway within ten years from the date of the Union.

In April, 1871, Mr. Sandford Fleming was appointed by Order in Council, Chief Engineer of the Canadian Pacific Railway.

No instructions but verbal ones accompanied the communication of this order, and he testified that he understood the instructions to involve, with a view of carrying out the terms with British Columbia—directions, “first, to find if a railway was practicable between the seat of Government and the Pacific coast, and, second, where the best route could be had.” Within these limits his liberty of action appears to have been unrestricted; not even the termini were fixed.

Mr. Fleming describes the first three years as having been taken up exclusively with surveys, and inasmuch as the succeeding three years were marked by their own distinctive characteristics, it has been thought desirable to deal with the subject of engineering in triennial periods.

From the beginning ample means were placed at the disposal of the Chief Engineer to meet all such expenditure as would be incurred in carrying out his wide instructions.

The first duty of the Engineering Department would naturally be to ascertain such facts concerning the country as were then unknown, and as were necessary to be ascertained, before deciding on the feasibility and location of a Railway; and in order to understand what had to be done, it is material to see what had been ascertained in that direction, and what assistance could be received from authentic information already at command.

The country through which the line must pass was for the most part, if not altogether, unsurveyed, but it was not entirely unknown. On the contrary, much information of a reliable character respecting it was at that early period available. Several generations had passed away since the Hudson Bay Company's posts had been established at the more important points throughout this vast territory and, in carrying on the business of their fur trade, constant communication had been kept up between their several posts by their officers and servants, along familiar land trails, and lines of water travel. The nature of the country, therefore, became well known to them, and although it was not the policy of the Company to make the outer world aware of the true character of the vast area over which their operations extended, their officers were generally ready to give information and to grant assistance to scientific travellers and explorers especially to such as bore Her Majesty's Commission.

Much, too, had been accomplished through the provident foresight of the British and Canadian Governments towards gaining a fair knowledge of its physical features. The Admiralty surveys of the great lakes furnished the outlines of the coasts of the Georgian Bay, Lake Huron and Lake Superior, and showed the positions of the bays and mouths of rivers available for harbours along their shores. The Admiralty charts of the Pacific coast likewise gave the position and other particulars relating to the islands, straits, inlets and harbours of British Columbia, and, as concerning the vast extent of country lying between Lake Superior and the Pacific, a large amount of valuable information had been obtained by the explorations of Captain Palliser and his assistants, under the authority of the British Government in the years 1857 to 1860, as given in his report laid before Parliament and published in 1863. On the face of the carefully compiled map which accompanies that report were represented the woodland, the mountain and the prairie regions, and their respective boundaries as well as the mountain passes, the lakes and courses of rivers and trails, and the various lines traversed by the officers of his command, together with notes on the soil, climate and the products of the country. The geological formations were also indicated, and the elevation of the great plains and terraces, as well as that of many of the passes through the Rocky Mountains. Respecting these passes, however, Captain Palliser's examinations were confined by his instructions to the area bounded on the north by Mount Brown near the Boat Encampment at the bend of the Columbia River, and on the south by the international boundary line. The

discovery of Yellow Head Pass, which was some sixty miles north of the Boat Encampment, was therefore impossible to him unless he exceeded his instructions. However, when Dr. Hector, the Geologist of the expedition, penetrated the main chain of the Rocky Mountains as far as Henry House, a post of the Hudson's Bay Company, located near that pass, the discovery was all but made, and, in fact, though not examined, the pass itself is marked upon Captain Palliser's map as the "Leather Pass."

The labours also of Mr. Alfred Waddington in connection with his project for a Pacific Railway, are acknowledged by Mr. Marcus Smith as having been of great service in the prosecution of the British Columbia surveys. In his "Overland Route through British North America," published in 1868, he remarks on the various Rocky Mountain Passes, and gives a table, here reproduced, of the different passes which had been explored on British Territory; leaving out the Athabaska Pass by Peace River, in lat. $56^{\circ} 28'$, as being too far north for the purposes he had in view :

Names of the Passes.	Ridge or Divide.		
	Lat.	Long.	Alt.
	Deg.	Deg.	Feet.
1. Yellow Head Pass, from the Athabaska to the Upper Fraser.	52°54	118°33	3,760
2. Howse Pass, from Deer River by Blacberry River to the Upper Columbia	51°57	117°07	6,347
3. Kicking Horse Pass, by Bow River and Kicking Horse River, to the Upper Columbia, Sullivan	51°16	116°32	5,420
4. Vermillion Pass, from the South Saskatchewan by Fort Bow (4,100 feet) to the Kootanie, Hector	51°06	116°15	4,947
5. Kananaski Pass, from Fort Bow by Ramsay River to the Kootanie (with a short tunnel 4,000 feet), Palliser.....	50°45	115°31	5,985
6. Crow's Nest Pass, by Crow River to the Kootanie.....	49°38	114°48	.....
7. British Kootanie Pass, by Railway River to the Kootanie, Blakiston	49°27	114°57	5,960
8. Redstone Creek or Boundary Pass, from Waterton River to the Kootanie, (partly on American ground) Blakiston.....	49°06	114°14	6,030

Mr. Waddington then proceeds to discuss the relative merits of the different passes, concluding that "there could be no hesitation in regarding the Yellow Head Pass through the Rocky Mountains, with its easy gradients and low elevation, as the only feasible one for a railroad."

During the year, 1857 and 1858 other exploring expeditions were despatched by Canada to the Red River, the Assineboine and the Saskatchewan; reports of which were published by authority of Parliament, and

also in 1860 by Mr. Hind, who took part in these explorations. His work is liberally illustrated by sketches, views, maps and sections.

The published reports of Mr. Dawson and the surveys of the Dawson route between Lake Superior and Red River, were also available. Of the character of the remaining portion of the country—that lying between Ottawa and Lake Superior—some information had been obtained by the surveys for the Ottawa Canal, of which the first was conducted by Mr. Walter Shanly and reported upon by him in 1858, and the second by Mr. T. C. Clark and reported on in 1860. More recent land surveys had been made by the Province of Ontario along the Georgian Bay and the north shore of Lake Huron as far as Sault Ste. Marie. The geological survey conducted by Sir Wm. Logan, with the maps accompanying his reports, embracing the whole country from the Atlantic seaboard to the Red River, also supplied much valuable information.

Besides these official explorations and surveys, other information of a general character relating to the climate and the conditions of the North-West Territories could be gathered from the published accounts of travellers through that region, such as Lord Milton and Dr. Cheadle in 1864, and several others who had made extended explorations.

The search for gold in the Gold and Cariboo ranges of British Columbia, unveiling as it did many of the physical features of the country, Mr. Trutch's map of 1871 giving the coast line, mountain ranges, roads, lakes and rivers of that colony, or the surveys upon which it was based,—all these sources of information were available before the commencement of the survey.

On the 5th May, 1871, Mr. Jas. H. Rowan, then an officer of the Government in the Public Works Department, was appointed, with the acquiescence of Mr. Fleming, as his chief assistant.

Mr. Rowan states in evidence that from that date until about the 10th June, he was engaged in collecting all the information that it was possible to obtain with reference to the country between Ottawa and the Rocky Mountains; that he made a digest of all the information so obtained and sketched an outline of the manner in which he thought it would be desirable to carry on the surveys. This report, having been considered by the Chief Engineer and certain alterations made, he says, the work was organized, and about the 10th June he (Mr. Rowan) set out with some thirteen parties of surveyors who were to be started from various points

between the Ottawa Valley and Red River, it being expected that each party would make a survey of about seventy-five miles per season.

About the same time Messrs John Trutch, R. McLennan and Walter Moberly were appointed to examine the country lying between the Rocky Mountains and the Pacific,—each of these gentlemen being in charge of two parties, while Mr. Frank Moberly was instructed to examine the prairie region between Fort Garry and the Rocky Mountains—one-half of his party having the Yellow Head Pass, the other half the Howse Pass as its objective point. Some twenty-one parties in all were organized for this work. The aggregate number of men employed during the first season was stated by the Chief Engineer in an official report to have been nearly 800, so that the parties must have averaged not much less than forty men.

The information from the reports of his subordinates, added to that at his command from the then existing literature on the subject, enabled the Chief Engineer, after less than a year's operations, not only to report officially the practicability of the entire route, but also to indicate its general course.

His first special report as Engineer of the Canadian Pacific Railway is dated 10th April, 1872. Before that was written the Yellow Head Pass of the Rocky Mountains was considered to be most eligible, and the facts reported led to an Order in Council dated 2nd April, 1872, by which it was adopted by the Government as the gate to British Columbia from the east.

The result of the first year's surveys are summed up in the official report above referred to as follows:—

“No serious engineering difficulty has been met with in passing from the valley of the Ottawa to the country north of Lake Superior. It is impossible, however, to speak so favourably of the country covered by the divisions G and H, embracing over 100 miles easterly from the River Nipigon. This section is excessively rough and mountainous, and the survey made through it did not result in finding a practicable line for the railway. West from Nipigon River to Fort Garry—although two divisions of the survey are incomplete—enough is now known of the country to warrant the belief that it will admit of a practicable line with favourable grades for the greater part of the distance.”

In respect of the line from Sault Ste. Marie towards Lake Nipissing he states that “a good line can be had with very favourable grades;” and with regard to the British Columbia section the following words are made

use of, viz.:—"There will be no difficulty in building a railway with very favourable grades from Tête Jaune Cache to Kamloops. From Kamloops a survey has been made to Burrard's Inlet, except about seventy miles on the extreme western end of the line, and on the latter section, no serious difficulties are believed to exist. The survey shows that a practicable line with favourable grades may be had, although the cost, particularly along the canons of the Lower Fraser River, will be considerably above an average."

The map accompanying this report of 1872, shows his projected line as follows:—"From Ottawa to the Red River, the line runs to the north of Lake Nipissing, thence to the south of Lake Nipigon, and after touching the north shore of Lake Superior, crosses the Red River between Fort Garry and Lake Winnipeg, after which it passes to the south side of Lake Manitoba, then over the great fertile plain to the Rocky Mountains, through the Yellow Head Pass, and down the north Thompson and the Fraser Rivers to Burrard Inlet on the Pacific Coast." There is also given a connected profile of the whole line from Ottawa to the Pacific Coast, which is placed in contrast with the railway line from New York to San Francisco, by the Union and Central Pacific Railway, as follows:—

	Distance in miles.	Elevation in feet.
New York to San Francisco.....	3,363	8,242
Montreal to Burrard Inlet.....	2,730	3,760
Difference.....	633	4,482

No location surveys were attempted at this early date, but it is a noticeable fact that, though some of the instrumental surveying parties—which were considered by the Chief Engineer to be indispensable—failed of their object, flying exploratory parties succeeded in obtaining the lacking data, so that a line was laid down upon the map accompanying this report, corresponding very closely with that which, after some years of persistent effort to find a better, has been finally adopted for location.

This is especially the case in respect of British Columbia, while as respects the prairie region, the location subsequently made north of Lake Manitoba, upon which the telegraph line was actually constructed, has been since abandoned in favour of the line on the south side of that lake, in the neighbourhood of that originally projected as the result of the first year's surveys.

It has before been stated that about the 10th of June, 1871, some thirteen parties left Ottawa, under the general direction of Mr. Rowan, to conduct the surveys from the Ottawa Valley to Fort Garry.

A more detailed account of the operations of these parties, as well as those in subsequent years, is to be found at the end of that portion of our report bearing upon Engineering.

A synopsis in tabulated form showing how all the parties were distributed as to districts, is also there given.

These parties had for their object to ascertain the practicability of a line from the Ottawa to the Red River, touching at some point suitable for a harbour on the north shore of Lake Superior. Many of the officers engaged upon these surveys, as well as those operating west of the Rocky Mountains, have given their evidence before us, and such of it as portrays any specific features calling for special remark is hereinafter dealt with.

Some of these parties continued in camp throughout the winter. Many difficulties were met with and great hardships endured, partly on account of the burning of the forest, by which several lives were unfortunately lost, and partly on account of insufficient commissariat arrangements.

The work of supplying several hundred men at various points along a line of some hundreds of miles of unfamiliar country, is admittedly one requiring more than ordinary organizing ability. In undertaking a work so extensive as that which was imposed upon the Chief Engineer, the selection of suitable men for the work should have been a matter of very serious deliberation.

Whether it was so or not, the arrangements made for the distribution of supplies to the parties operating east of Fort Garry appear to have been lamentably defective, resulting, in some instances, in great individual hardships, and, in many cases, in serious delays in the prosecution of the work, and consequently loss to the public revenue.

Mr. Carre states that soon after their first arrival at Thunder Bay, Mr. Rowan started two parties under Mr. John Fleming and himself (Carre) for Lac des Isles, from which point one party was to work easterly, and the other westerly. They were provided with what Mr. Rowan considered to be sufficient supplies for a month. During their journey, *en route* to the starting point of their intended operations, they began to question the adequacy of supplies, and came to the conclusion that when they arrived

there they "would have to turn back with all hands and get provisions." Fleming's party, therefore, returned to Thunder Bay, and the other one appropriating the supplies intended for both, proceeded to Lac des Isles. Notwithstanding this precaution, their provisions ran out one week after they reached that point. Fresh supplies were forwarded; but on the 15th October, although full information had been sent to Thunder Bay as to their requirements, they again failed; and the party had to abandon the field and return to headquarters. His men refused to go back, and he was compelled to hire a new party.

Mr. Carre estimated the direct loss in wages, paid to the men while not at work, at about \$3,840. There is little doubt, however, that including the provisioning of the party, the cost of this misadventure could not have been less than \$8,000.

Mr. Kirkpatrick, who was, in 1871, a transit-man, attached to party G, also gave evidence as to repeated delays from similar causes. At one time he had to employ a party of forty to forty-five men in making snowshoes and toboggans, in view of the approach of winter; these necessary articles not having been provided by those whose duty it was to do so. On another occasion, constant and repeated delays in provisioning the party induced the Engineer to make a written complaint—in reply to which the Commissariat Officer wrote back stating, "that if God spared his life, and "the mosquitoes were not too bad, he would supply them better in "future."

These cases are cited as typical of others which will be found recorded in the evidence, and we are forced to the conclusion that there was a great want of business capacity in the management of this branch of the undertaking, which is the more to be deplored, inasmuch as every day lost to each party's effective energy, involved a pecuniary loss of from \$100 to \$120.

The only operations in the prairie region during 1871 were those under Mr. Frank Moberly before mentioned.

Some description of the physical features of the Mountain Region is, perhaps, necessary to a proper understanding of the operations carried on therein, and a just appreciation of the importance of the results achieved.

The coast line of British Columbia extends from the 123rd degree of west longitude on the international boundary (latitude 49°) to the 130th

degree, west longitude, on the 55th parallel, which approximately marks the most southerly part of Alaska in contiguity with British territory.

Its general trend is from south-east to north-west.

Parallel with its coast line the Cascades form an almost impenetrable belt of mountains, extending from the confines of Alaska on the north to the southernmost boundary of the province.

At intervals of from fifty to one hundred miles (and sometimes less) along the whole extent of the coast line, deep arms of the sea run inland in mountain gorges, some of them for a distance of sixty or seventy miles.

On the eastern frontier of the province, the Rocky Mountains lie in about the same general direction from 120° west longitude, at the northern extremity, to 114° where they intersect the United States boundary.

The "Rockies" are flanked on the west by several other ranges of comparatively short length, the most important of which, viz., the Cariboo, the Gold or Columbia and the Selkirk ranges, extend in the order named from north-west to south-east, almost parallel with the general course of the Rocky Mountains.

The Selkirk, the most easterly of these smaller ranges, is almost entirely embraced by the River Columbia, which takes its rise on the western slopes of the Rocky Mountains near latitude 50° , and, after running northwesterly for nearly two hundred miles to a point known as "the Boat Encampment," abruptly turns to the south and pours its waters, through the United States territory, into the Pacific.

From the western bend of the Columbia River—on its southward course as above described—rise, more or less abruptly, the next of the said smaller range of mountains known as the Gold or Columbia range, extending from the southern boundary of the province up to Yellow Head Pass.

This famous pass is situated directly north of the Boat Encampment, at the bend of the Columbia, and distant from it some sixty miles, be it more or less. In this neighbourhood the Thompson and Fraser Rivers take their rise.

The Thompson River runs for about 100 miles due south, and is then turned in a south-westerly direction by the foothills of the Columbia range, which widens out as it trends southward, until its mountains become merged into the Cascades, upon the United States boundary.

The Fraser River, like the Columbia, runs for some 200 miles in a north-westerly direction until, in the vicinity of Fort George, it too turns abruptly south, and after traversing some five degrees of latitude and receiving into its bosom the waters of the Thompson, it enters the Straits of Georgia at about the same longitude as that of Fort George.

Within the northern bend of this magnificent river, the Cariboo Mountains form an almost unbroken range.

West of these subsidiary ranges and between them and the Cascades on the Pacific Coast, is an elevated plateau, more or less mountainous, but level as compared with the country which we have been describing.

The first efforts of the engineering staff in this portion of the country were naturally directed to the discovery of a pass in the Rocky Mountains, through which the construction of a railway would be practicable, and from which a route through the inferior mountain chains might be had to the central plateau above referred to. The Yellow Head and Howse Passes were selected as the two which were most likely to prove available, and six parties were organized in the summer of 1871 with a view to test their relative claims to adoption.

The general position of the first has already been described. The lower end of Moose Lake, which marks the westerly limits of the pass, is almost exactly in 53° north latitude and 119° west longitude.

The Howse Pass is some 120 miles further south. This depression in the Rocky Mountain chain occurs near the sources of the North Saskatchewan. A direct south-westerly line from Howse Pass to Burrard Inlet would, immediately upon leaving the Rocky Mountains, at this point, cross the Columbia River on its north-westerly course, and striking across the Selkirk Range for some fifty miles, would again encounter it on its southerly route towards the Pacific. This imaginary line would be the base of a triangle whose two sides would be formed by the course of the river, and whose apex would be the point previously referred to as the Boat Encampment, distant from Howse Pass some eighty miles. After crossing the Columbia the second time, which it would do at a place called Big Eddy, the line would run through a depression in the Columbia range *via* Eagle Pass to Shuswap Lake. From that point a broken and rocky country extends to the valley of the Lower Fraser. If, however, instead of continuing in the same south-westerly line from Shuswap Lake—the western side of the lake being gained—the course should be diverted

in a direction somewhat more westerly, a valley would be struck through which the waters of the lake find their way to Kamloops where the North Thompson joins the main stream. From this point the Thompson and the Lower Fraser flow in a zigzag but generally south-westerly course, until their waters are emptied into the Straits of Georgia at Burrard Inlet.

It has been stated that six parties were organized in 1871 to operate in this region.

Two of these parties were placed under the direction of Mr. John Trutch, with instructions to survey from the mouth of the Fraser to Lytton, and thence *via* Kamloops and the Thompson River to Shuswap Lake; this distance being the westernmost section of the route from Howse Pass to Burrard Inlet, just described.

Two more were placed under Mr. Walter Moberly; the one to take up the line of Mr. Trutch's operations, and to extend it easterly by exploring the country from Shuswap Lake through the Eagle Pass, as far as Big Eddy, a point on the Columbia River, on the west side of Selkirk range. For the time being, no effort was to be made to pierce the Selkirk range; but the other party under Mr. Moberly's control was instructed to strike across the country from Hope (on the Lower Fraser), in an easterly direction, to Wild Horse Creek, a little to the south of the head waters of the Columbia River, and thence to follow the course of that river upon its eastern bank to a point about the latitude of Howse Pass.

From this point they were to survey easterly through Howse Pass; and after reaching the summit, to descend the eastern slopes of the Rocky Mountains, to connect with Mr. Frank Moberly's party on the Kootanie Plains.

Had the Howse Pass proved to be a more favourable one than its rival, the Yellow Head, persistent efforts would, doubtless, have been made to find some available route through the Selkirk range, to connect the two lines, which Mr. Moberly's parties were, at this period, surveying.

An extension of the line projected by the party, whose proposed operations we have just been considering, westerly through the Selkirk Mountains to Big Eddy would have completed a chain of surveys from the head waters of the Saskatchewan to Kamloops, and thence *via* the Thompson and Lower Fraser to Burrard Inlet, by a route as direct as the most sanguine might hope to obtain, through so mountainous a region as that which this province presents.

Apart, however, from the probability of finding a favourable line through the Selkirk range, it was known that from Big Eddy the Columbia River might be followed, around the bend, *viâ* the Boat Encampment to the vicinity of the Howse Pass; and the line so obtained, though probably one hundred miles longer than if carried through the Selkirk, would still compare favourably, in point of distance, with that *viâ* Yellow Head Pass and the North Thompson River.

The remaining two parties did not branch off easterly from Kamloops, as did those of Mr. Moberly, but proceeded from that point, under charge of Mr. R. McLennan, in a northerly direction—the one to make its way through the Cariboo range with a view to find some available line from the neighbourhood of the Upper Fraser River to that of Tête Jaune Cache *en route* to Yellow Head Pass; the other to follow the valley of the North Thompson to the Yellow Head Pass, and there to examine its capabilities.

Mr. Walter Moberly and Mr. R. McLennan, who directed the operations of four out of the six parties engaged upon the British Columbia surveys during 1871, have both given evidence before us.

In our judgment the method adopted at the outset for the examination of the country was one which involved larger parties and a greater expenditure than the circumstances justified, and inasmuch as the evidence of these gentlemen describes the operations of their several parties as circumstantially as could be desired, we think it is well to report more fully than we should otherwise do as to the size, equipment and progress of these parties, with the view of illustrating some features of a system which we consider objectionable.

In order to measure the necessity for such large parties and for preparations so extensive as their organization and supply called forth, it is necessary to keep in mind their respective objects and destinations.

The two parties under Mr. Moberly were organized to ascertain the practicability, through a comparatively unknown country, of two links of a prospective route for a railway, between Kamloops and the plains east of the Rocky Mountains.

Party T was to examine one portion of the route, *viz.* : From Shuswap Lake to Big Eddy, west of the Selkirk range. The other, party S, to take up the same line—but beginning on the opposite side of the Selkirk range—and to proceed through the Howse Pass to the eastern side of the Rocky Mountains.

Party S had from eighty to ninety animals (*i.e.*, horses and mules) and about twenty-four men besides packers---the latter would number about ten for this sized party--so that the party in all, including a commissariat officer, would not have numbered less than thirty-five. Of these, beyond the staff, some were axemen who were paid \$40, and some packmen whose wages ranged from \$50 to \$90 per month, all provisioned at the Government expense.

The party was organized at Victoria; was conveyed by steamer to Hope, and, accompanied by some eighty or ninety horses and mules, had to make their way several hundred miles to the point at which the survey was to begin.

Leaving Hope the first week in August, they did not reach Wild Horse Creek (near the source of the Columbia River) till some time in September. From that point to Howse Pass it became necessary to make a trail to get in their supplies; and they did not reach the point at which it was designed their surveying operations should commence until the 2nd of October.

Mr. Moberly did not accompany his party to Wild Horse Creek, having had to take the route *viâ* Colville, a point south of the United States boundary line, in order to purchase further supplies, and make arrangements for their transport.

Notwithstanding this long detour, however, he reached Howse Pass in advance of his party. Unaccompanied by them, and attended only by three or four Indians, he went through the pass and descended the easterly slopes of the Rocky Mountains.

On his return to the western side of the Mountains he found his party had reached the scene of intended operations.

A depot was built; and his party having opened a trail by the Blacberry River to the summit of the pass, a distance of some thirty-seven miles, they were forced at the beginning of November to suspend operations and go into winter quarters.

Mr. Moberly, with one of his party and six Indians, returned to Victoria, taking with him, for transmission to Ottawa, the data which had been obtained. They accomplished the journey, upon snowshoes, in fifty-four days; and it was during this journey that he ascertained, by simple observation, the impracticability of the route from the Columbia River depot westerly through the Selkirk Range.

Mr. Moberly stated, in evidence, that the amount expended by him from the 20th July, 1871, to the end of the year, reached \$57,000, which covered the requirements of his party through the winter.

Party T consisted of about twenty-two men; they had neither packers nor animals.

This party was instructed to run a line through Eagle Pass. Having proceeded from Yale to Kamloops, by the usual method of travel, they were conveyed thence to the neighborhood of the pass by batteaux.

From this point they started their exploration eastward. They surveyed some forty-four miles, as far as Big Eddy, on the Columbia River, where they wintered.

Supplies for party T had been purchased by Mr. Moberly; and had accompanied the party as far as Eagle Pass, where they had been cached. The scarcity of Indians to pack them had made their transportation to that point—beyond navigation—very expensive. Mr. Moberly states the transport to have cost, on a rough calculation, 80 cents per pound from Kamloops to the depot, half-way through Eagle Pass; while the transport from Colville to Big Eddy, the eastern terminus of the survey, cost only from five to six cents per pound.

The parties under the charge of Mr. R. McLennan, each numbered about forty, of whom all but five were labourers.

The party (Q) were directly under his control; left Kamloops early in August, under instructions to proceed, in as direct a route as possible, to Yellow Head Pass, and to survey thence westerly to Tête Jaune Cache, at which point it was expected the other party (R) which was to operate in the Cariboo district (if successful in piercing that range from the valley of the Frazer) would meet them.

Party (Q) was accompanied by some forty animals.

They reached Cranberry Lake, which Mr. McLennan states to be about 200 miles north of Kamloops, and distant some fifty miles from Yellow Head about the 5th of October.

At this point, winter threatening to close in, he thought it prudent to reduce his party so as to have no more than could subsist well till spring upon the supplies they had with them. All the packers and nearly all the animals were therefore despatched to Kamloops. This done, a party of twelve or fourteen were left at Cranberry Lake to survey that part of the

route, and continue examinations during the winter, while Mr. McLennan accompanied by Mr. Selwyn (Director of the Geological Survey), and four men, went on to Yellow Head.

This small exploring party, six in all, accompanied by about the same number of animals, left Cranberry Lake about the 18th of October, and penetrated the pass to within about ten miles of the summit level, when on the 26th of that month a severe snow storm warned them to retrace their steps. Mr. McLennan reached Cranberry Lake, on the return journey, about the 1st of November, and leaving his party there, he made his way back *via* Kamloops to Victoria, and thence returned to Ottawa to communicate the results of his explorations. We have already stated that the impracticability of the Selkirk Range was discovered by Mr. Moberly, unaccompanied by his party, while on his return journey to Victoria. By Mr. McLennan's evidence, it will be seen that the crucial question as to the capabilities of Yellow Head Pass, was determined likewise by a bare exploration. And yet the information obtained was so convincing that without waiting further surveys the Yellow Head Pass was adopted and the Howse Pass abandoned.

Many engineers have been examined by us upon the expediency of commencing the examination of an unsurveyed country with the view to building a railway over it, by simple explorations rather than by instrumental surveys. All of them, not excepting Mr. Fleming himself, agree in the view that under ordinary circumstances, the instrumental examination ought to be deferred until after the preliminary track surveys had shown, in what localities the closer and more expensive surveys should take place. All excepting Mr. Fleming and Mr. Rowan state that in the case of the Canadian Pacific Railway the ordinary rule ought to have been followed. Mr. Fleming and Mr. Rowan testified that the case of this railway was an exceptional one, and that under the circumstances it was expedient to depart from the ordinary rule, and to begin by the more exact and more expensive system.

Mr. Fleming said that if time had not been limited he would have taken a course entirely different from that which was adopted. He would have had explorations made—a reconnaissance of the whole country before employing expensive parties to make instrumental surveys; that that system would undoubtedly have been the best to adopt, because it “would have saved a lot of money”; that the explorations would have given a general

idea of the country, and would have shown where it was justifiable to incur the expense of an instrumental survey, and that this would have been a great advantage. He also said that if the time had been much longer than two years he would, north and west of Lake Superior, have taken a different course, namely, to examine simply by micrometer and barometer for the purpose of getting a general, though not strictly accurate knowledge of the country, because this would have enabled him to project the more expensive instrumental surveys on routes which were most promising.

Again, Mr. Fleming said that if time was not an element—for instance, if ten years had been available instead of two, he would have sent exploring parties up the River Ottawa to make a micrometrical and barometric observation, and the same up other rivers, and in that way endeavoured to narrow the limits within which to make the kind of surveys which were made.

In this case the system adopted from the beginning for the examination of the country was generally an instrumental survey, *i.e.*, a continuous chain of instrumental measurements upon a line over which levels were taken; “the engineer endeavoring to follow a tract of country through which a railway route had subsequently to be laid out”.

This is apparent from the evidence of Mr. Fleming and Mr. Rowan, as well as from the fact that the instructions issued by the Chief Engineer to his staff, and dated 24th May, 1871, contained no directions for independent exploring parties; they provided for examinations of that character only when made in connection with the instrumental force.

The evidence leads us to believe that, in devising the system for the first examination of the country, simple explorations were so completely ignored, that the cost of them as compared with instrumental examinations, was not seriously considered or discussed.

Mr. Fleming and Mr. Rowan were both examined concerning the cost of track surveys. Mr. Fleming did not remember that calculations upon that subject had ever been made by him. Mr. Rowan had not any settled opinion as to the size of parties necessary to carry out a simple exploration, in the country which had been under his charge. He seemed to think, moreover, that they would have been useless as independent expeditions.

Under these circumstances, it became our duty to investigate carefully the reasons why the course which is, in the profession of engineers, under-

stood to be one followed under ordinary circumstances, was, in this particular case, departed from, and a system which is admitted by the Chief Engineer to be more expensive adopted in its stead.

Mr. Fleming said that because of the limited time within which this railway was then expected to be commenced, it was expedient to treat the case exceptionally; and under the circumstances he considered it advisable to begin by making instrumental examinations, generally.

We endeavoured to ascertain Mr. Fleming's reasons for saying that the shortness of the time within which the road was expected by him to be commenced, made it necessary to depart from what he understood to be the best method when time was not limited. He said, "it was necessary to ascertain whether a line from end to end of the country was practicable or not, before a blow was struck", meaning, as we understood him, that a continuous line should be accurately described from instrumental data before a decision could be arrived at on the vital question—could a railway be built.

We have taken occasion while examining those engaged upon these surveys, especially such as have been deemed to be men of professional acquirements, to request from them an expression of opinion on this point.

Mr. Marcus Smith says: "I think I should have preferred to have thoroughly examined the country, and almost decided upon the line or lines before I made the instrumental surveys;" and, referring to Mr. Moberly's survey of the Howse Pass, he expresses his belief that the comparative advantages of the different passes might have been ascertained by parties of ten, instead of the much larger parties which were actually engaged upon the Howse Pass explorations. Referring to that expedition he says: "I think it was premature going into such expensive surveys as he did."

In a letter addressed by Mr. Marcus Smith to the Chief Engineer in 1872, which was produced in evidence, the following passage occurs: "It is impossible now for me to reduce the expenses very materially as all the parties are in the field at a great distance, and a mistake was made at first in placing large surveying parties in the field. They ought to have been simply exploring parties, each consisting of two thoroughly competent engineers, each having a mountain barometer, compass and tape line, and a few guides and horses, altogether not more than one-fourth of the size of the present parties, as these could have made surveys, if done with

judgment, sufficiently close to determine the general route of the railway, which would have left only one line, with minor deviations, to be surveyed or located."

Similar opinions were expressed by Mr. Moberly, who stated that, in organizing the party as he did, he simply carried out instructions received from the Chief Engineer.

Mr. McLennan states: "I have always maintained it would have been better to have explored for two or three desired or desirable points before making instrumental surveys at all. A few men with Indians can get through a country well, for the Indians, as a rule, are very good packers, but when you get a large party for an instrumental survey, that you have to fit out for surveying, you increase the weight of the whole expedition, that is, without knowing you can get a line through at all, you simply get routes without a certainty they will even be utilized."

Mr. Fleming in describing the effect of the two systems, said that the loss, if any, by that which was adopted, was a financial loss, and that the only gain by the other would be that it "would be more likely to meet with ultimate success."

He testified, moreover, that it happened in various localities, that the instrumental examinations were sometimes of no avail, because obstacles were met which might have been discovered by simple exploration; that these localities were principally north of Lake Superior, and in British Columbia; that, however, some of the obstacles met with, were not such as would have been discovered by simple explorations; and that in some portions of the country, even if time had not been limited, it would have been advisable to begin the examination by instrumental surveys.

We understand from Mr. Fleming's evidence that this exceptional country was at the eastern end of the proposed line, "more especially from Nipissing to the Ottawa," and somewhat further west for a considerable portion of the distance to Lake Nipigon.

It is proved beyond doubt, as before pointed out, that on the first year's examination of British Columbia, the crucial question of "a gate" through the Rocky Mountains, involving as it did the choice between two rival passes, was made and settled on from the reports of a flying exploration, showing that an instrumental traverse line was not indispensable even when determining the merits of two rival routes, and if not, all the reason-

ing in the matter appears to us to lead away from the propriety of beginning the examination of the country by large, heavily equipped and slow moving bodies of surveyors.

But even if a line, ascertained by instruments, were necessary as an antecedent to the first blow, we do not see how instrumental parties from the outset hastened its accomplishment.

It was to be expected, and it happened, that instrumental parties occasionally met such obstacles as to make their labours useless, and to require a fresh instrumental examination of the particular link allotted to them—the obstacles being such as a flying exploration would have discovered. The question of time, therefore, seems to us to assume this shape: does an exploration, followed by an instrumental examination, take more time than two instrumental examinations over the same section of country? It is obvious that this is not the case, and therefore, the shortness of the time relied on by Mr. Fleming, fails to establish, in our judgment, the expediency of the system adopted.

The four expensive parties under Mr. Moberly and Mr. McLennan gave, as a result of their season's operations, no more of the desired knowledge than, in our judgment, might at that time have been expected to be gained from mere exploring parties at a very small proportion of the cost actually incurred.

After questioning Mr. Fleming upon several occasions concerning the comparative cost of a bare exploring party, and one making an instrumental survey, he said he could not give very satisfactory information on the subject: he had found it impracticable to adopt the exploring system and the cost of it was not considered; "it was impracticable," he said, "for more reasons than one. The men that could make a survey of that description (*i.e.*, simple exploration) were not available—they were not to be had in the country."

We think the evidence shows not that such men were not to be had, but that when they were to be had they were employed in preference on instrumental surveys, as in the case of Mr. McLennan and Mr. Moberly, whose services as explorers were nevertheless valuable and decisive.

Mr. Fleming testified that he adopted the operations without any great consideration as to the comparative cost of different kinds of expeditions, the main object was to get the information desired by the Government, and he considered the cost a matter of secondary importance.

After considering the whole evidence on the subject, we have been unable to satisfy ourselves that the necessity under which Mr. Fleming considered himself to lie, to be prepared to commence the construction of the line within two years was a reasonable justification for the immensely increased expenditure due to the course adopted, namely, that of placing in the field, from the inception of the undertaking, fully equipped instrumental surveying parties, instead of preceding such operations by simple explorations.

On the contrary, we feel constrained to say that a different course, namely, postponing, as a rule, the instrumental examination until a simple and less expensive one had shown where the more accurate and more expensive one would be required, was the course which at that time ought to have been considered proper to adopt, and which, if adopted, would have resulted in a very large saving of public money without any actual loss of time in the progress of the undertaking.

During the year 1872, twenty-two parties in all were in the field, irrespective of the trans-continental tour of the Chief Engineer.

Several instrumental parties, each consisting of from thirty-five to forty men, and two small exploratory parties of nine and ten men respectively were operating in the Woodland District.

Their general object appears to have been the discovery of a practicable line north of the more rugged country surveyed during the preceding year, in the pursuance of which Mr. Murdoch has stated in his evidence, that he was instructed to investigate the feasibility of a line from the crossing of Winnipeg River *vid* English River, and thence south of Lac Seul to the head of Nipigon Lake. This route, he states, he found by enquiry to be impracticable, and having discretionary powers, he determined on Rat Portage as an objective point, and explored thence easterly. He adopted the route as laid down on a plan produced by him as an exhibit during his evidence, the original of which he believed to have been burned by the fire, which destroyed the Canadian Pacific Railway offices, during the winter of 1873-74. This line is almost identical, as far east as Eagle Lake, with that finally located for construction.

This appears to have confirmed Rat Portage as the governing point between Lake Superior and Red River. Mr. Murdoch's party on this occasion consisted of nine men with dog trains.

From Eagle Lake a line was surveyed by Mr. Jarvis to Sturgeon Lake, and from Sturgeon Lake one in the same general direction was extended by Mr. Keating to the north side of Lake Nipigon.

The remaining surveys, five in number, were made between Nipigon and the Ottawa Valley. In respect of the operations of these parties, Mr. Rowan reports on the 5th June, 1873, as follows :—

“The result of this instrumental survey places beyond a doubt the practicability of constructing a line of railway from the vicinity of Lake Nipissing to Red River, on which neither the amount of excavation and embankment, the bridging, the grades, or the curves will be exceptionally heavy. On that portion of the line between Red River and Lake Superior, I believe it will be possible so to construct the line that no grade exceeding 52·80 feet per mile will be required, and that grades of this inclination will be neither numerous nor of any great length. On that part of the main line between the Nipigon Branch and the eastern terminus, the present approximate section shows a few points where grades of seventy feet to the mile are introduced. I believe, however, that further exploration will enable these difficulties to be avoided, and that throughout the whole district no grade exceeding 52·80 feet per mile will be required, and of these a proportionately small amount.”

No engineering operations were carried on in the prairie region during 1872.

In British Columbia eleven distinct surveys, besides an exploration north of the 54th parallel, were made during the year 1872, as follows :—

Mr. Moberly and Mr. Trutch, each having two parties, made a series of surveys from Yellow Head Pass, the whole length of the Thompson Valley to Kamloops.

Mr. McLennan, with two parties, starting from Lake William, near the Fraser, devoted his efforts to the discovery of a feasible line, thence easterly to the Thompson Valley, as an intermediate link in a route from that point towards Bute Inlet.

This general line was continued by parties under Tiedeman and Gamsby, the latter gentleman having made an exploratory survey from Waddington Harbor to Seymour Narrows.

Three other surveys were made south of Kamloops.

Thus it will be seen the whole length of the two alternative lines from Yellow Head to Bute and Burrard Inlets, respectively, were covered by the operations of that year.

During the winter of 1871-72, Mr. Moberly's two parties were encamped, the one at Big Eddy west, and the other at the Columbia River Dépôt east, of the Selkirk Range.

While in Victoria, Mr. Moberly having transmitted to Ottawa all the data obtained from the surveys of his parties prior to their going into winter quarters, represented to the Chief Engineer that to complete the work committed to him during the ensuing season, he required the services of a third party; and permission to organize it was granted. This party was intended to be utilized chiefly in trail-making.

As he was on the eve of his return to Howse Pass, he received instructions from Ottawa to abandon his surveys in that district, and to take his party *viâ* Athabaska Pass to Yellow Head, to complete the surveys from Tête Jaune Cache to Edmonton.

Mr. Moberly pointed out the difficulties of the proposed course and endorsed by the Lieutenant-Governor, Mr. Trutch, who was himself an able engineer, asked permission to take his party through Howse Pass, and thence to Edmonton, from which point he could survey westerly to Henry House, while party T, following the course of the North Thompson, could reach, *viâ* Cranberry and the Albreda Lakes, the westernmost portion of the line to be surveyed, namely, Tête Jaune Cache, and could operate thence easterly to Henry House. In reply, Mr. Fleming telegraphed that the time from Boat Encampment to Henry House would be only ten to twelve days, and that east of Jasper House the country was flat, wet and swampy, and he doubted the propriety of going by Edmonton. This led to Mr. Moberly's party proceeding *viâ* Athabaska Pass.

Mr. Moberly states that he then ordered the trail party which had been organized for the Howse Pass survey to proceed up the North Thompson, and to make a trail by which further supplies which he had contracted for might be transported to Tête Jaune Cache for the use of party T.

Party S did not reach Henry House until the 24th of October, 1872, having been compelled to make a trail all the way from the Columbia Dépôt.

Mr. Moberly affirms that had he taken the route suggested by himself *via* Edmonton, he would have reached the scene of his intended operations three or four months earlier, and would have been able to complete the whole line of survey he was directed to make before the setting in of the winter.

Meantime party T, under Mr. Mohun, having reached Blue River, a point about two-thirds of the way from Kamloops to Tête Jaune Cache, and not having, as expected, fallen in with the supplies which had been somewhat delayed *en route*, became disorganized, and instead of going back to assist the trail party, its members spent some six weeks hunting for game.

In consequence of this delay and the tardiness of their operations they failed to reach Henry House as instructed; they arrived at Moose Lake on the 8th of September, having surveyed a line of twenty-nine miles from Tête Jaune Cache, at the rate of about a mile a day. They were, therefore, dismissed, and Mr. Moberly with party S, and the trail party under Mr. McCord, having worked eastward as far as Lac à Brulé some forty-nine miles distant from Henry House, went into winter quarters.

Mr. Moberly estimates the loss entailed by the delays attending the transport of his party and supplies from Howse Pass to Henry House to have been not less than \$60,000, and a sum nearly equal to that to have been thrown away by the misconduct of party T.

There is, therefore, strong reason to believe from the evidence that a large outlay of money, possibly over one hundred thousand dollars, was wasted in connection with the surveys of parties S and T during the years 1871 and 1872.

That Mr. Moberly and the Lieut.-Governor, Mr. Trutch, had good reasons for the objection to the route proposed by the Chief Engineer, is evident from the fact that some three months or more of the most valuable season of the year (notwithstanding that they had a pack trail of some 200 animals at their disposal), were occupied in making a trail and transporting supplies from Columbia River to Henry House, from which point their work easterly was to begin.

In the matter of furnishing supplies for his parties, a wide discretion was left with Mr. Moberly, and we have to report that this was not exercised with due consideration of the consequences. The evidence shows that in furnishing party S, he procured a large quantity of goods which, in the estimation of the Chief Engineer, as well as in ours, was unnecessary and ought not to have been purchased; and in providing for party T, it is only too apparent that supplies were procured and, at a heavy expense for transportation, taken to Eagle Pass, on the chance of their being afterwards required at that spot.

The withdrawal of this party from that district required that they should remove these supplies back to Kamloops at a cost of 80 cents per pound, or that they should abandon them. Inasmuch as flour could be purchased at Kamloops for $4\frac{1}{2}$ cents per pound, Mr. Moberly decided on the latter course. He values the provisions so abandoned at about \$7,000.

Mr. Moberly had, before his employment in the Canadian Pacific Railway, been engaged professionally in examining different portions of British Columbia. He discovered the Eagle Pass, which he thought to be a feasible one for a railway between Shuswap Lake and Big Eddy, on the route hereinbefore described, and having apparently a favourable opinion of that as a prospective location, he advised the instrumental survey of this link of the line, and it was accordingly undertaken—as we think, unnecessarily because, as before mentioned, it could only be available in case the Yellow-head Pass was never adopted, and the problem whether it was to be adopted, could have been settled, and was in fact settled without any data derived from instrumental examinations.

There are two points concerning these supplies abandoned at Eagle Pass, on which we think Mr. Moberly's action unreasonable, considering the circumstances in which he was placed at the time.

Assuming that a location of the line through this pass was to be expected to follow in 1872 the preliminary survey of 1871, and that therefore a provident foresight required that some provision for the supplies of the persons to be engaged in that work should be made during the first season, we think that if the final cost of them was to be taken into account, there was no good ground for supposing that the best course was to take them

with party T and to cache them as was done half way on the route to Big Eddy. It must be remembered that these supplies were understood to be wanted, if at all, only on the return trip of party T from Big Eddy to Shuswap Lake. It seems self-evident that if supplies could be laid down at this initial point at a cost far less than at Eagle Pass, then it should have been so arranged, the more especially as in transporting them westward, the party would be travelling over a road which they had traversed the year before---and would not be forced, as they were during the first season, to pack them over a route entirely new to them. Now, Mr. Moberly has testified, that the \$7,000 worth of supplies cost 80 cents per pound to transport them to Eagle Pass, and that he did not take them farther east, because at Big Eddy they could be laid down by navigation from Colville at a cost for transportation of about 6 cents. We think the decision to take them from the west, as was done, to Eagle Pass, showed an entire disregard of pecuniary results.

But we have to point out that Mr. Moberly's action in providing them at all, was not based upon any instructions, on the contrary, it was solely on his opinion that Howse Pass would be eventually chosen in preference to the Yellowhead Pass; a result which was, to say the least, too uncertain to justify the outlay undertaken by him on the possibility of it. The evidence that this was the only ground for procuring those supplies to be deposited at Eagle Pass, is unequivocal.

Mr. Moberly testified that he left them there in 1871, expecting that in 1872 he would there complete the location survey, because he thought it probable that it would be the pass that would be adopted in preference to Yellowhead.

In our judgment this was not sufficient ground for Mr. Moberly's action concerning these supplies.

Without questioning Mr. Moberly's professional judgment, which we believe is entitled to respect, we cannot refrain from pointing out that he exhibited a tendency to insubordination, which, if general, would have rendered futile the best endeavours of the chief administrative officer of the Department, he had been elected to serve.

Mr. Fleming met Mr. Moberly, at or near Yellowhead Pass, in the summer of 1872, and after asking and receiving information as to these transactions which we have been describing, as well as others during the

preceding season, determined to dispense with his services, and subsequently by letter notified him to that effect.

Mr. Moberly, however, placed his own judgment above that of his superior officer, and decided to continue the surveys upon which he had entered until they were complete. In reference to this matter he says, in his sworn deposition (p. 1828): "On receiving the letter above alluded to, the instructions conveyed in it were too childish to be followed, and I then decided that I would carry on any further work to the best of my judgment for the interests of the Government; that I should obey orders when I could see they were sensible, but not otherwise, and as soon as I could do so get out of the railway service as quietly as possible."

There seems also to have been a deplorable lack of discipline on the part of party T, conducted by Mr. Mohun.

It is manifest that a serious waste of money occurred in connection with the surveys in British Columbia during the seasons of 1871 and 1872.

The cost of the surveys over the whole line up to the 30th June, 1873 was \$1,081,395.36, and may approximately be considered as covering the expenditure incurred in respect of the first two seasons' operations.

By the analysis of surveys accompanying this report it will be seen, that some forty-four parties were during that period engaged, being an annual average of twenty-two, of which three were merely explorations, the remainder instrumental surveys.

The Chief Engineer in his report of 1872 states, as has been before remarked, that nearly 800 men had been employed on the work. The evidence which has been taken leads us to believe that the usual number of men attached to fully equipped surveying parties, ranged from thirty to forty-five; while that of those engaged upon explorations would reach eight or ten.

Assuming then that the nineteen instrumental parties engaged during each of the years 1871 and 1872, consisted of thirty-eight men (the mean between these two extremes), and that the three exploratory parties each consisted of ten, some 750 men would thus be accounted for. Dividing this number into the average annual expenditure of \$540,697 we have \$720 as the cost per man per season.

Applying the same method of calculation to the aggregate expenditure upon surveys to 30th June, 1880, the cost per man for each season averages about 700, or from \$3 to \$3.50 per day per man, during some six to seven months of the year. A detailed analysis of the expenditure made through Mr. Wallace, covering the outlay on account of parties operating east of Fort Garry, confirms this estimate. The whole sum expended through him amounts to \$535,154.36. The number of men employed is found, by a careful examination of the pay-rolls, to have been equivalent to one man for 152,273 days. Dividing the former amount by the latter, we have almost exactly \$3.51 as the cost per man per day. This sum covers wages, supplies, travelling and other expenses, including those of management. Excepting in some specific cases which have come before us in evidence, the expenditure for supplies, though high, does not appear to have been extravagant or wasteful. Still it must be remarked that the accounts have been very insufficiently vouched.

During 1873 the operations in the mountain regions were confined to exploratory surveys by Mr. E. W. Jarvis, Mr. C. H. Gamsby, and Mr. Walter Moberly, and an exploration by Mr. Marcus Smith. In the prairie district an exploration was made by Mr. Selwyn, and a survey by Mr. H. B. Smith, while in the woodland or eastern district some nine or ten parties were still engaged in trying to improve upon the lines which had been already run.

On the 26th January, 1874, Mr. Fleming made his second special report, and stated in effect that several routes through British Columbia had been found on which the obstructions met with, although formidable, were not insuperable. That a favourable and comparative easy route had been found from the Ottawa to the northerly side of Lake Superior; that it would be possible to locate the line direct from the northerly side of Lake Superior to the prairie region, without unusually expensive works of construction, and yet with remarkably light gradients in the direction of heavy traffic; that there would be no difficulty in finding a comparatively easy route across the prairie region, and, therefore, that the "practicability of establishing railway communication across the continent, wholly within the limits of the Dominion, is no longer a matter of doubt."

Mr. Marcus Smith, after nine years' connection with these surveys, and after having, as Acting Chief Engineer in Mr. Fleming's absence, made himself familiar with all the surveys from one end of the line to the other,

states in evidence that "the second year, in the middle of 1873, within less than two years we had sufficient information to begin to construct a railway across the country. It is possible, if a company had been making the surveys, they would have begun after one year's surveys."

It appears to have been considered that sufficient information had been gained at this date to warrant construction being proceeded with in accordance with the terms of Union with British Columbia, and a charter was granted for the building of the road throughout. This, however, lapsed before any works were commenced under it.

In 1874 the Canadian Pacific Railway Act was passed, and the construction of the railway, as a public work, was placed under the general superintendence of the Department of Public Works.

The second triennial period, of which that year marked the commencement, was one of great activity, sixteen explorations and sixty-four instrumental surveys (of which latter some twenty-eight were either revised or location surveys) took place during the three years referred to, apportioned as to districts as follows :—

Districts.	Explorations.	Instrumental Surveys.
Woodland Region.....	4	24
Prairie Region.....	4	11
Mountain Region.....	8	29
	16	64

The aggregate cost of these operations was a little in excess of two millions of dollars.

The thirty-six exploratory surveys averaged a little more than thirty-four thousand dollars each, as against twenty-seven thousand during the three years preceding.

Of the four explorations made in the Woodland region, one only was west of Nipigon, namely, that from Nipigon to Dog Lake in 1876; the remaining three were east of that point—one, in 1875, between Pic River and Sault Ste. Marie, and two, in 1876, between Pic River and French

River. The instrumental surveys undertaken in the Woodland region during the same period were as follows :—

West of Nipigon.	Exploratory Surveys.	Locations or Trial Locations.
1874.....	3	4
1875.....	6	
1876.....		4
	9	8
East of Nipigon.	Exploratory Surveys.	Locations or Trial Locations.
1874.....	5	
1875.....	1	
1876.....		1
	6	1

A detailed statement of these surveys, showing the country traversed, will be found at the end of our report upon the question of engineering, together with a table exhibiting the number and class of surveys in each district respectively.

Until we come to consider the question of location, there does not appear to be anything in connection with these surveys requiring special remark beyond the temporary diversion of the energies of the Engineering Department, during 1874 and 1875, in the direction of examining the interior water stretches.

Since the close of our sittings for taking oral testimony, Mr. Fleming has transmitted to us a copy of a memorandum addressed by himself to the Hon. Alex. Mackenzie, dated the 29th of September, 1874, bearing upon this matter, and has requested that it should be treated as part of his evidence, and inasmuch as it does not appear upon any of the public records we introduce it at this point.

*Memorandum in reference to the construction of the Canadian Pacific Railway
and Settlement of the North-West Territory.*

OFFICE OF THE ENGINEER-IN-CHIEF, CANADIAN PACIFIC RAILWAY,
OTTAWA, 29th September, 1874.

To the Honourable ALEX. MACKENZIE,
Minister of Public Works, etc., etc., etc.

SIR,—In accordance with your wishes, I have given some consideration to the question of constructing the Pacific Railway, and the best mode of proceeding under the Statute passed last session. I now submit the general views I have formed on the subject.

You are already aware that I have always considered and advocated the construction of a line of telegraph, in advance of the railway, as a necessary and most important preliminary work.

The construction of the telegraph from the Pacific coast as far easterly as Lake Superior, is now placed under contract, and may be considered secured. For reasons which will hereafter be presented, I think that there should be no delay in inaugurating the construction of the telegraph from Lake Superior along the route of the Railway, to the south side of Lake Nipissing, at some point where it would connect with the telegraph system of Ontario and Quebec.

I have the highest possible opinion of the producing capabilities of much of the country extending for a thousand miles, west from the Lake of the Woods. I believe this vast territory is destined to support a very large population, and I think that a judicious expenditure on the part of the Government, in opening up lines of communication, together with a well devised scheme of emigration, will very soon have the effect of settling the country.

Under favourable circumstances, I believe that in a few years the population will be counted by millions, and that the day is not far distant when the census will show a greater number of Canadian subjects to west of the Lake of the Woods, than it now shows to the east of it. Ontario and Quebec will then be classed with the Eastern Provinces of the Dominion.

If such a population existed on the central plains at the present time, who, for one moment, would doubt the gigantic proportions of the traffic between the millions east and the millions west of Lake Superior—a traffic which would not only find a channel through the magnificent system of lakes and rivers during the season of navigation to the Lower St. Lawrence, but would absolutely demand for its service throughout the whole year, the shortest possible all-rail route that can be made.

The traffic indicated would, without any doubt whatever, fully occupy every line of communication now thought of. Freight would naturally seek the water channels during the season of navigation, while passengers and the light kinds of traffic would, as a general rule, go at all seasons of the year by rail. Looking to the future, therefore, it is of the utmost importance that the railway should be projected and constructed on the shortest possible route that can be found.

It is a mistake that many of the people have fallen into, to suppose that the shortest route would run south of Lake Superior. The best information yet obtained goes to show that a line south of Lake Superior would be from 59 to 94 miles longer than a line north of it, touching at Thunder Bay, and from 123 to 153 miles longer than a line touching at Nipigon Bay.

Entirely apart, therefore, from the question of passing through a foreign country, it is quite clear that all idea of spending Canadian money towards constructing a line south of Lake Superior should be abandoned, and every effort should be directed to establish a more direct line to the north.

Of the two lines north of Lake Superior, the one touching at Nipigon appears to be the shortest by about 64 miles. That route, therefore, is the one which, in my opinion, should be adopted, if one still shorter cannot be found. It would, looking to the not distant future and the vitally important objects to be gained by having the shortest possible through line, be most unwise to twist the main trunk railway a single mile out of the direct course. The very shortest line that can possibly be secured will be longer, all will admit, than we would desire. If, therefore, no line can be found shorter than the one referred to, by Nipigon, that undoubtedly is the true route for the line of railway.

To carry the trunk line round by Thunder Bay would practically be placing the Eastern and Western Provinces of the Dominion 64 miles further apart, and imposing an unnecessary tax of nearly two dollars per head on every passenger using the railway for all future time.

I must not be understood to advocate that the construction of a continuous *all rail* route north of Lake Superior should take precedence over everything else. I simply recommend that it should from the first be kept prominently in view and form part of the general design, and that when the proper time arrives it should be carried into execution. There are other sections and other works more immediately necessary.

Existing canals and railways in connection with the Great Lakes bring the steam communication of this country from the Atlantic Ocean to Thunder Bay. Thunder Bay is the natural and proper outlet for the mixed land and water route, thence to Manitoba, popularly known as the Dawson route. This line of communication should, I think, at once be rendered as efficient as possible for present purposes, and for permanent use during the seasons of navigation as a freight route.

The Dawson route will never be of much service, until it is operated by steam throughout; the 50 miles east of Lake Shebandowan and the 100 miles west of Lake of the Woods, should immediately be railwayed, the portages intervening that cannot be canalised should at once be tramwayed and provided with the best mechanical contrivances for transferring and handling freight, with ease and speed.

The outlet of the Lake of the Woods at Rat Portage is an objective point on the Pacific Railway and may be made a common point on the Dawson route; from thence to Red River the railway should be made common to both lines of communication.

East of Rat Portage, I think that it would be advisable to establish the Dawson route as an entirely independent line of traffic.

I am perfectly well satisfied that at no distant day, the traffic between Lake Superior and Red River will fully engage both lines of communication, and that the part of the Pacific Railway which will first demand a double track, will be that portion between Rat Portage and Red River.

I feel convinced that the Dawson route, improved and employed to the fullest capacity, will be utterly inadequate for the freight traffic that will be created, and hence the importance I attach to the construction of that portion of the Pacific Railway between Red River and Lake Superior, of such a character as will specially adapt it for the heavy traffic which will soon seek this channel.—*Vide* Pacific Railway report 1873, page 33.

The Pembina Branch will of course be useful for a short time, in giving access to Manitoba, until the other and more direct lines are established through Canadian territory.

The Canadian Pacific Railway from Manitoba eastward cannot stop short at Lake Superior ; there terminating, it would only be employed during the summer months. The Pembina Branch would continue to be the only inlet and outlet during the winter season, but when the country becomes populous the people on the plains will never be satisfied to make a journey through the United States of 1,589 miles to Toronto, when it might be reached by travelling only 1,173 miles ; nor would they submit to be thrown 1,925 miles away from Montreal when the completion of the link east of Lake Superior would shorten the distance 637 miles.

With regard to the country west of Red River, the question of the day is really its settlement. The lakes and rivers can undoubtedly be used in promoting this work, to a great extent, but owing to the climatic fact that the water channels cannot be employed at all for a considerable portion of the year, something more than the navigation of the lakes and rivers is required to render the settlement of the country speedy and successful.

We must look to the establishment of railways, not simply a trunk line, but a complete railway system, as the only satisfactory means of maintaining communication between the several sections of this vast territory.

A trunk line is probably the first railway that should be undertaken. Branches to it will follow in due time, and they will ramify in every direction where profitable traffic is found possible.

Everything so far points to the Yellowhead Pass as the proper gateway through the Rocky Mountains to the Pacific coast. Whatever explorations now being made and yet to be made may bring to light, I assume for the present that the trunk line will pass through the Yellowhead Pass, and I have laid down on the accompanying map its probable approximate position from Red River westerly.

From the trunk line I have indicated where some leading branches may be judiciously established. It will be seen that one branch is projected from the main line at the Red River Crossing, nearly due west by the valley of the Assiniboine. This branch would serve the fertile country in that direction, and extended to the coal deposits recently discovered by the Boundary Survey, would supply the inhabitants of the Province of Manitoba with fuel. Other branches are shown from the main line, southerly and northerly. From a point in the neighborhood of Edmonton, one of these would run through a beautiful and extensive country on the eastern flank of the Rocky Mountains, extending from the North Saskatchewan towards the boundary of the United States, while another would tap the Peace River region, and both would be of immense service in the developing of the mineral and agricultural resources of these regions.

Many other branches will be formed as circumstances require ; those I have alluded to are simply leading ones that suggest themselves at the present time.

With regard to the country on the western side of the Rocky Mountains, and the railway route through it to the Pacific coast, it will be necessary to wait until the surveys are further advanced before much more can be said than has already been presented in my last general report. All that can now be done is to reserve a sum for proposed expenditure on whichever route may be found most eligible.

Having submitted these general remarks, I will now proceed to state the views I have formed with regard to the carrying into execution the important works referred to.

It would undoubtedly be advantageous, in many ways, to construct the Pacific Railway through the instrumentality of a large company, instead of directly by the Public Works Department.

I feel satisfied, however, after giving the matter careful consideration, that it would be best, during the next two years or so, to carry on initiatory and desirable works directly by the Department of Public Works. This would give time to obtain full information respecting every portion of the country, to locate the railway route, to erect the telegraph, and to do all the works embraced in the telegraph contracts, such as clearing, making roads, &c. It would enable the Government, as well as parties who may propose entering into contracts, to form a more intelligent idea of the undertaking proposed to be carried out, than can possibly be formed at the present time.

Before the expiration of a period of say two years, the Government could publicly invite and receive proposals from capitalists, who might be prepared to form one or more strong financial companies, to carry out the undertaking, and such proposals as may be made, could embrace the assumption, by the contracting company or companies, of such portions of the whole scheme as the Government may execute in the meantime, and as may be stipulated.

In the meantime, I would recommend that the Government, through the Department of Public Works, proceed during the next two years, with as much energy as possible, in carrying out certain preliminary and necessary works as follows:—

Firstly.—Telegraph Line, including clearing, two chains wide along the route of the Railway, through forest and pack-trail or roads.

1. British Columbia to Edmonton.....	\$300,000
2. Edmonton to Fort Pelly.....	117,250
3. Fort Pelly to Fort Garry.....	56,250
4. Fort Garry to Lake Superior.....	189,120
5. Lake Superior to Lake Nipissing.....	250,000
	<hr/>
	\$912,620
Total, say.....	\$1,000,000

Secondly.—Land and water communication from Lake Superior to Red River (Dawson route)

	Approximate Expenditure.
1. Railway from River Kaministiquia to Lake Shebandowan....	\$1,000,000
2. Railway from Rat Portage to Red River.....	2,000,000
3. Portages and equipment between Lake Shebandowan and Rat Portage.....	250,000
	<hr/>
Total expenditure on the Dawson route, of which \$2,000,000 would be common to the trunk line of the Pacific Railway.....	3,250,000

Thirdly.—Land and water communication, Red River to the North Saskatchewan.

1. Railway from Red River to Lake Manitoba.....	\$1,500,000
2. Portage, railways, improvement of navigation of Saskatchewan, steamboats, etc.....	250,000

Total expenditure in connection with the Saskatchewan navigation, of which \$1,500,000 would be on account of the main line of the Pacific Railway.....	\$1,750,000
---------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------

Fourthly.—Pembina Branch..... \$1,000,000

Fifthly.—On account of construction of Pacific Railway in British
Columbia and between Rat Portage and Nipigon..... \$3,000,000

RECAPITULATION.

1. Pacific Railway Telegraph Line.....	\$1,000,000
2. Railway and water communication from Thunder Bay to Red River.....	3,250,000
3. Railway and water communication from Red River to Edmon- ton.....	1,750,000
4. Pembina Branch Railway.....	1,000,000
5. Pacific Railway in British Columbia, etc.....	3,000,000
Total.....	\$10,000,000

The expenditure above suggested would initiate construction generally throughout the whole line, and it would probably be quite as much as could judiciously be made within the period referred to.

It would secure a telegraph line along the route of the railway from Ottawa to British Columbia, it would clear the forest land to a width of two chains, it would establish a road passable for horses along the entire route, and thus give access to the country for contractors, explorers and settlers, who would follow and render the establishment of regular postal communication possible and easy at a very early day.

The expenditure proposed would also develop and so far perfect the Dawson route, as a line of steam communication, as would make it really serviceable for all kinds of traffic until the completion of the railway between Lake Superior and Red River. On the completion of the railway a classification of the traffic would naturally follow. The Dawson Route would continue to be of value as a means of transporting way freight, while passenger and other traffic would find their way by rail.

The expenditure proposed would also connect Red River by rail, with Lake Manitoba, place railways on the portages lying between Lakes Manitoba, Winnipegosis and the Saskatchewan River, improve the rapids of the Saskatchewan, place steamboats on the whole route

and thus practically extend the means of steam communication from tide water at Québec, by both branches of the Saskatchewan, to the foothills of the Rocky Mountains.

It will be seen, too, that the expenditure contemplated will be strictly confined to those portions of the great lines of communication essential to the opening up of the country, and which would in the highest degree assist in the economical construction of that which, at the end of two years, would remain to be done.

In the estimate presented, I have placed \$3,000,000 for expenditure in British Columbia and on the line between Rat Portage and Nipigon. I have not attempted to separate the sum, as the amount which may be expended in British Columbia depends so much on circumstances.

With regard to the estimate, I may state that, although roughly approximate, it may be considered a liberal one; and with regard to the period of two years, I should not be understood to mean strictly two working seasons.

I should rather have used the general expression two or three years, as, owing to the peculiar circumstances which obtain, I doubt if it would be possible to carry out all that is contemplated or expend the estimated amounts judiciously and economically within the shorter period. There would be nothing, however, to prevent the Government entertaining any proposals that may be made by financial companies, for the construction of the whole line of railway before the completion of those portions herein referred to; the amount actually expended could then be considered as so much paid the company on account, or dealt with as may then be agreed.

My present object (on your invitation) is to point out which plan of procedure would, in my judgment, be the best. I feel well convinced that whether or not it may be considered advisable to place the whole undertaking by and-by in the hands of one large company, it would in the meantime be in the public interests to initiate construction in some such manner as herein indicated. I am satisfied that with the preliminary works alluded to, well advanced, every section of the country made accessible and its speedy settlement assured, it would be possible to make terms with capitalists far more favourable to Canada than can possibly be expected at the present time.

Should you entertain favourably the suggestions herein contained, I would further recommend that public notice be at once given that the grading of the railways from Thunder Bay to Shebandowan, from Red River to Rat Portage, and from Red River to Lake Manitoba, will be ready for contract before next meeting of Parliament, and that tenders will be invited as soon as the surveys now in course of completion be ready, and the plans, profiles and specifications prepared; the object being to afford intending contractors an opportunity, before winter comes on, of personally examining into the character of the excavations which will require to be made on the several sections referred to.

I am, &c., &c.,

SANDFORD FLEMING.

A contract was entered into with the Hon. A. B. Foster in 1874 to survey and build a line of railway, known as the Georgian Bay Branch, ter-

minating at the mouth of French River on the Georgian Bay. Some three or four hundred miles of lake navigation became available from that point to Thunder Bay. Thence the line of the Canadian Pacific Railway was located to Lake Shebandowan, and surveys were entered upon to ascertain to what extent the lakes and rivers of the Dawson route, might be utilized and the portages overcome. Farther surveys were undertaken with a view to ascertain if the navigation of the Lake of the Woods could be extended westerly, and examinations were made of certain portages in connection with lakes Cedar, Winnipegosis and Manitoba, in order to ascertain the practicability of uniting their waters by short canals.

In pursuance of this general object the construction of Fort Frances Lock was entered upon early in 1875.

The Hon. Mr. Mackenzie, while giving evidence before us, stated "that the policy of the Government looked to the possibility of the road east of Thunder Bay not being constructed for many years, and to use the water as a means of communication between the Ontario system of railways and Fort William, and possibly to utilize the small lakes in the interior of the country also for a term."

Inasmuch as these surveys were entered upon in pursuance of a certain policy of the then existing Administration, we consider it unnecessary to do more than refer to the matter in the most cursory way.

The Canadian Pacific Railway Act of 1874, to which allusion has already been made, provided among other things that a line of electric telegraph should be constructed in advance of the said railway and branches along their whole extent respectively, as soon as practicable after the location of the line had been determined on. In the autumn of the same year, contracts for the construction of a continuous telegraph line from Thunder Bay on Lake Superior to the then existing telegraph system of British Columbia, were entered into. The location of the whole line at an early date therefore became necessary.

The first definite location of any portion of the line, was that of the Pembina branch, over a section of the country, which left little room for engineering ability. Owing to the distressed circumstances of many of the inhabitants of Manitoba, the Government decided, in the summer of 1874, to place under construction the portion of the line between Winnipeg

and the international boundary, and instructions were issued to Mr. Rowan, the district engineer in that Province, to locate the line without delay, following as much as possible some of the road allowances between the two points named. This was done, and on the 8th of August tenders were invited, which resulted in a contract, dated on the 30th of that month, for the construction of the road bed.

In April, 1875, the line from Fort William to the Shebandowan and from Selkirk to Cross Lake were placed under contract, and on the 7th June, 1876, the construction of the line from Thunder Bay to Shebandowan, having been diverted in a more northerly direction from Sunshine Creek westward, the grading and bridging from that point to English River was contracted for. The manner of letting these contracts and all other matters relating thereto, not directly of an engineering nature, are dealt with later on.

In nearly every case, from 1875 to 1878, the contractors came upon the ground prepared to commence operations before their work was fully laid out. In the case of contracts 13 and 14, it is alleged that losses were sustained by the contractors on this account, and claims were in fact preferred against the Government for compensation, one of which was paid, and the others are pending. This brings us to the consideration of a matter which has given rise to much controversy—that is the insufficiency and inaccuracy of information offered to tenderers in connection with the construction of the road-bed.

During the progress of the evidence it has transpired that in the case of the first four contracts for road-bed construction between Thunder Bay and Red River, tenders were invited and contracts let before a sufficient examination had been made of the projected line to enable the Engineering Department to state, in most cases, even approximately, what work would require to be performed.

The bills of works offered to tenderers were invariably calculated from nothing more reliable than profile plans. In every case the contract was let before the quantities had been made up from cross sections. Mr. Fleming testified that an estimate so made would be a “mere guess.” It might, therefore, have been expected, and it did happen that the quantities stated in the bills of works have, in nearly every case, been largely exceeded by the actual quantities the contractors were called upon to

perform. As respects the contracts named the difference between their actual cost and the amount at which they were contracted for was over fifty per cent., as follows :—

	Anticipated cost at date of letting contract.	Actual cost as far as ascertained.
	\$	\$
Contract 5.....	200,000	208,163
do 5a.....	60,000	161,124
do 13.....	*294,000	313,200
do 14.....	402,950	730,136
do 15.....	1,593,083	2,582,479
do 25.....	1,037,061	1,396,824
	3,587,096	5,391,926

* The estimate in this case was really \$406,194 for about forty-five miles—the westerly twelve and a-half miles were abandoned, and for illustration only this amount \$294,000 is taken, being about the same proportion as the distance finished.

The Chief Engineer has expressed the opinion that although accuracy in the estimated quantities offered to tenderers is, of course, desirable, it is not of any great importance when contracts are let upon a schedule of prices. In such cases he affirms the aggregate cost of the work may be greater than expected, and thus lead to disappointment; but that no material loss can accrue to the Government. He was asked whether inaccuracies in the estimated quantities, particularly when the offers were inconsistent in prices, did not sometimes affect the actual and final cost of the work in addition to leading to disappointment. His evidence was that he was not aware of a single instance where that had been the result, and that in no case had the rank of the tenderers been altered to any appreciable extent by such inaccuracy. The evidence leads us to a different conclusion. If the quantities upon which the tender is based should turn out to be approximately correct, and the various tenders consistent as to prices, the relative position of the tenders, when subsequently based on executed quantities, might not undergo much change, but should the prices affixed to the tenders be incongruous and the relative proportions of earth excavation, rock, masonry, &c., be materially altered during the process of construction, then those tenders which seemed to be the lowest might turn out to be considerably higher than others. To exemplify this a statement

has been prepared showing, firstly, the relative positions held by the tenderers for section 15, and under which the contract was made, and, secondly, the relative rank they would have occupied had the figures contained in the last progress estimates been offered to tenderers, instead of the imaginary quantities upon which their offers, as a matter of fact, were based.

STATEMENT showing the result of letting contracts upon the plan of a schedule of prices, where the quantities offered in the bills of works are inaccurate, and prices affixed by tenderers relatively incongruous.

Names of Tenderers for "Section 15."	At date of opening tender as per original Bill of Works.		As they would have ranked had Bill of Works corresponded with last Progress Estimates.	
	Rank.	Amount.	Rank.	Amount.
		\$		\$
Martin & Charlton.....	1	1,540,090	6	2,586,959
Sutton & Thompson.....	2	1,591,825	5	2,582,479
J. A. Green.....	3	1,679,065	3	2,467,338
Talbot & Jones.....	4	1,683,085	9	2,643,213
D. Hinkson.....	5	1,695,665	1	2,386,342
Hill, Lipe & Co.....	6	1,727,875	10	2,706,760
D. S. Booth.....	7	1,734,820	7	2,597,883
C. C. Gregory.....	8	1,745,935	19	3,392,905
Mullen & Whelan.....	9	1,749,395	12	2,731,047
O'Brien & Ryder.....	10	1,780,310	11	2,729,205
J. Whitehead.....	11	1,799,790	8	2,635,797
A. Farewell.....	12	1,815,485	2	2,433,022
Wright & Scachrel.....	13	1,832,175	4	2,514,249
Kavanagh & Co.....	14	1,895,404	14	2,751,909
M. A. Cleveland.....	15	1,899,680	13	2,731,814
Hunter & Murray.....	16	1,966,755	15	2,779,112
Campbell & Kelly.....	17	2,052,770	17	3,098,611
McFarlane & McRae.....	18	2,093,970	16	2,939,144
Brown & Ryan.....	19	2,169,125	18	3,266,771
Reed & Dixon.....	20	2,950,000	20	3,523,734

In preparing this statement the tender of Macdonald & Kane has been omitted for the following reason:—

Mr. Macdonald stated in evidence that he declined to enter into the contract when awarded, because he had based his calculations upon section 14 being completed within a certain fixed time, by which condition the Department would not agree to be bound. His calculations were therefore based upon contingent conditions, which those of other tenderers were not, resulting in lower prices throughout, which prices he refused to stand by unless the uncertainty which surrounded his competitors were in his case converted into a certainty by the Government guarantee. For this reason his tender is not fairly comparable with the others, and has been excluded.

It will be seen by reference to the above statement that the five tenders which were assumed to be the lowest were as follows:—

1. Martin & Charlton	\$1,540,090
2. Sutton & Thompson.....	1,591,825
3. J. A. Green.....	1,679,035
4. Talbot & Jones	1,683,085
5. D. Hinkson.....	1,695,665

Had the quantities contained in the bill of works furnished to intending tenderers been according to the work actually required to be done, the tenders would have rated as follows:—

1. D. Hinkson.....	\$2,386,342
2. A. Farewell	2,433,022
3. J. A. Green.....	2,467,338
4. Wright & Scachrel	2,514,249
5. Sutton & Thompson.....	2,582,479

Thus, by a change in quantities (the prices being the same in both cases) the lowest tender, that of Martin & Charlton, finds no place among the first five.

The second lowest, that of Sutton & Thompson, on which the contract was actually based, recedes from the second place to the fifth.

The last of the five, that of D. Hinkson, becomes the first, and two tenderers ranking twelfth and thirteenth under the original bill of works, become respectively second and fourth.

It will be further remarked that, while by virtue of the first calculation, Sutton & Thompson, the second lowest and successful tenderers were

below D. Hinkson by \$103,840, by virtue of the second and upon the actual work done, their tender is higher than his by no less than \$196,137.

Their relative position, therefore, has been altered by the change of quantities by some \$300,000.

Had it been possible, therefore, to offer accurate quantities to tenderers, Mr. Hinkson should have obtained the contract at a price which would have saved the Government nearly \$200,000, or about 8 per cent. upon the entire outlay.

The foregoing facts sufficiently illustrate the principle involved.

Recognizing this feature as one calling for careful consideration on the part of the Government, enquiries have been directed during the examination of both contractors and of engineers, to the existing system of offering public works for tenders; but neither contractors nor engineers appear to think that there is any alternative method between that of basing tenders upon a bulk sum and that of basing them upon a schedule of prices, as at present carried out. While each system has its advocates amongst engineers, both appear to us unsatisfactory and unreliable. It has occurred to us that a modification of the existing practice might be worthy of consideration. The danger attaching to the present system would seem to arise mainly where the prices upon which a tender is based are relatively incongruous. It will be easily understood that if a contract is based upon an unreasonably high price for one class of work, rock for instance, and a correspondingly low price for another class, earth for instance, then a change in the course of construction, which would increase the quantities in rock, would augment the profits; but if the increase should be in earth it would diminish them; while, if both should happen, that is the rock, be diminished, and the earth increased, then the contract which had promised large profits might involve an actual loss; and so, from time to time, the chance of loss or gain on the bargain would fluctuate with such changes as might be made on the different classes of work. A contract for the same works, based on a different tender where the offer for rock was unreasonably low, and the earth proportionately high, would, by such change, be affected in the opposite direction; the increase of rock causing a loss—of earth, a gain.

It is plain, therefore, that tenders showing the same total for the whole estimated quantities would not be equally advantageous to the Government under all circumstances; and, in fact, if the prices were not consistent throughout, the relative rank of tenders would change according as the

particular classes of work might be increased or lessened, on which their respective prices were too high or too low.

No such change in results, however, could happen if the prices given in the tender afforded on each class of work about the same percentage of profit or loss as the case might be: the increase or the decrease of the quantity would proportionately increase his profit or loss and no more.

In such cases the result of a contract to the contractor and to the Government, would depend on a careful consideration at the beginning of the real value of each kind of work. That being ascertained, the tenderer whose capital and ability gave him facilities over others, could well make the lowest offer.

If, after having obtained by a thorough survey, fairly accurate quantities, the Department—having due regard to the conditions as to locality, facility of approach for moving machinery and supplies, and other considerations affecting cost—were to fix a standard price for each class of work offered under the schedule, and invite tenderers to state at what uniform percentage above or below that standard they would be willing to undertake the work, then these difficulties arising from incongruous tenders would disappear, and with them the great temptation offered to the Government Engineer to permit, or even suggest modifications, by which low priced work would be diminished and more remunerative work increased.

Lest from the foregoing remark it might be inferred that, in our opinion, the public interests had suffered from the recreancy of the supervising engineers to their trust in the manner indicated, it is only fair to say that the whole tenor of the evidence has been generally in a noticeably contrary direction.

Apart from the error of judgment in supposing that contracts may be let with impunity upon bills of works in which no more than fictitious quantities are named, the engineering of this period is marked by an unfortunate omission for which we find no excuse.

The Government was committed to the final location of considerable portions, in all 225 miles, of the line between Lake Superior and Red River, without any adequate effort having been made to learn the nature or the extent of the different kinds of material which would be met with in the actual construction of the work. These sections were from time to time submitted to public competition and placed under contract, in ignorance of

data upon which a reasonable amount of information is indispensable where the element of cost is of any consequence.

The absence of this information led to the executed quantities being largely in excess of those which were presented to the tenderers by the bills of works on which the prices were to be fixed and the total cost of construction estimated.

In addition to the disappointment occasioned in these instances by the increase in cost over that which was assumed at the time to be approximately correct, we are of opinion that the money expended on the works, reached a higher figure than would have been necessary had the Government and the tenderers been informed, as fully as the circumstances permitted, concerning facts which could have been readily ascertained, and which it was the duty of the Engineering Department to ascertain, before advising upon the quantities or the value of different classes of the work.

Between Thunder Bay and Red River, the country at each end of the located line is comparatively flat, while towards the middle of it the surface is very irregular, owing to the frequent and sudden changes from stretches or knolls of rocky formation to the waters of lakes or inlets. The distance covered by section 14, next east of Red River, was principally flat. The easterly two miles of it and the adjoining section 15 was of the roughest character. Next Lake Superior section 13 was rather level; the section 25, next west of that, was as a rule "flat, but dotted with rocky islands like small hills."

It is the cost of these four sections, in all about 225 miles, which we consider to have been materially affected by the ignorance to which we have alluded. Over the very rough portion of the country, notably on section 15 and the adjoining portion of 14, the embankments made through the waters have called for a very large quantity of material beyond that supposed to be sufficient when it was first decided to cross them by a solid road-bed. The truth is that the depth of waters, and that was about all that was known to the engineers, gave but a faint idea of the quantities which had to be deposited, before a suitable embankment could be raised upon a sufficient foundation.

The bottom of these waters was composed of soft, deep and movable mud. The weight of the embankment, as it was built up, caused a sinking much beyond that which would have occurred had the bottom been of the character which it was assumed to be, and in its progress downwards to a

firmer foundation, the earth dumped into the road-bed displaced the original bottom so that it was pressed outwards and upwards above the former water level, for hundreds of feet on each side of the work, yielding its place below to material provided by the contractor at Government expense.

How far the expense of providing material for this purpose could have been prevented is not known. It was never ascertained, because no other location was looked for in order to avoid this expense. Whether the soft movable mud which has been described is to be found in some localities of a greater depth than in others, or whether it invariably bears a relation to the depth of water over it, or to the area over which it is found, are data which would be necessary to have, before deciding to what extent, if any, a different location would have saved the cost [occasioned by it on the line adopted.

The absence of knowledge concerning the natural formation under the line of country selected for the location, led to another serious disappointment in this—that long swamps were crossed, which subsided under the weight of the road-bed to such an extent, as to render it necessary to make the embankments deeper than would have been necessary, had the natural foundation been of the character which the Engineering Department assumed it to be. This is particularly the case on section 14 where the Julius Muskeg is crossed.

Speaking of this locality, Mr. Murdoch testified that he was, from different examinations in that part of the country, aware, in 1872, of the character of the marshes and the bottoms of them; that he had passed over the vicinity of the line, and had noticed where "poles were stuck down to any length." He said that about that time in a conversation with Mr. Fleming and Mr. Rowan, he alluded to "the swamps that surrounded the outskirt of the whole of that rocky country," mentioning that they "were very deep and very long in some instances," and communicating what he considered to be the difficulties of those places. Upon this occasion Mr. Rowan differed from him, and, according to Mr. Murdoch's recollection, stated that there "was good sandy bottom."

In another locality, that of section 15, the work of construction was designed and the quantities stated in the bill of works given to the tenderers as if the excavations on the line, or close by, would provide but a small proportion of the earth required to make a solid embankment, and

instead of that it was arranged that trestle work should, in the first place, be erected to carry the track.

Mr. Ruttan, who was the contractor's engineer on this section, testified that upon their first inspection of the line, they saw that the embankments could be made from the immediate locality without resorting to trestle work.

During the progress of the work on this section, the character of it was changed completely, by abandoning the trestle work as a prominent feature and adopting solid earth instead.

We do not think it material to the matter now under consideration that other engineers differed on these subjects from those who had the direction of affairs. What occurs to us is that whatever the opinions of other engineers might be, or whether such opinions were known or not, it was the duty of the Engineering Department, before advising the Government to select particular locations, to ascertain, by methods well known to the engineering profession, such facts as would enable the Department of works to estimate as closely as circumstances would permit, the cost of any particular section, either with or without comparison with any other.

We can only say, concerning these matters, that having no knowledge of them, the Department of Public Works was not able to learn whether, other things being equal, the line selected was in the locality where it could be constructed at the least expense to the country.

In another matter, however, we have come to the conclusion that the ignorance of what could have been readily learned and ought to have been learned, has led to a large direct loss.

Over a considerable distance of the country between Thunder Bay and Selkirk, swamps or muskegs prevail. The material here is of a spongy nature, holding a considerable portion of water, so that when it is removed from its natural position and placed in an embankment, from 40 to 60 per cent. of its original size disappears, and the balance only is of any practical use. Throughout the four contracts above mentioned, the removal of this material has been paid for as if it had been ordinary earth, and in the case of two of them, 14 and 25, the work in this particular material was extensive, so much so that Mr. Fleming attributed the increase of cost on section 25 over that originally contemplated, as entirely due to the large quantity of this material, and paying for it at earth prices. We find this excess to be over \$350,000

Enough has been said to make it manifest, that the country has had but poor compensation for the money spent on excavation through muskegs. This, however, would not show that the loss is due to an oversight in the engineering.

An engineer who had been in the Government employ during the construction of these links, and speaking of muskeg, testified that he had seen "men taking it out with a broad axe in large pieces over a cubic foot in size, and pitching it on to the barrow with a prong fork instead of a shovel," and that he had "seen a man wheeling a barrow full of this stuff out of the ditch, placing it in a dump, and when he was running up the board (the plank on which he was wheeling) the top of the load was higher than his head ; that it had no consistency."

Although this description may be of an instance where the material was lighter and less valuable than usual, the whole evidence concerning it shows that it was not worth nearly so much to excavate as ordinary earth, and was not worth half as much for practical results. There is no escaping the conviction, that had its nature been known, when the construction of these sections was submitted to competition, muskeg material would have appeared in the bills of works, as a separate item.

Mr. Fleming was examined concerning this matter ; and it is apparent that there never was, even in the last of these contracts, any provision made for inviting distinct offers concerning it. Late in the day, he directed the attention of the engineers to the expediency of avoiding its use where that could be done, or of rendering it more available by cross-logging ; but the fact remains that when it was used, and in many places it had to be used, it was paid for at the price of ordinary earth.

We can have no doubt that if its nature had been noticed and remarked upon in the information given to tenderers, the offers would have contained a lower price per yard for moving muskeg material than for ordinary earth, and that a large saving in the cost of the railway would have been so effected. Although we have said that the muskeg material was of less practical use than ordinary earth, we do not mean that it does not make so good a road-bed, for, on the contrary, there is a certain elasticity in it which makes it a pleasant road to ride on, and it is easier on the rolling stock and permanent way ; in order, however, to preserve it from fire, it requires protection by a coating of gravel. The objection concerning it is that, under the circumstances, the price paid for it was unreasonably and unneces-

sarily high. The quality of this material is of a desirable character ; but the quantity remaining in the embankment was small, compared with that excavated.

Mr. Fleming, during his examination, raised an argument that a clause in the specifications made it unnecessary to pay for this muskeg at earth prices. No other witness, engineer or layman, gave such an opinion ; and the language leads us to say that there was no room for his argument.

The clause upon which he relied principally was this :—

“ 30. The measurement of quantities shall invariably be made in excavation, unless in special cases, if any, where this may be found impossible ; in such cases the engineer shall determine the quantities in embankment, after making all proper allowances, of which he shall be the judge.”

According to our view, this does not touch the case under consideration ; it cannot be said that it was impossible to measure the quantity which was excavated ; and that under this clause the embankment must be resorted to for the purpose of learning how much had been taken out.

That clause clearly refers, as was mentioned in evidence by another engineer, to such cases as sometimes occur where, from the shape of the original surface, or some other cause, it is not possible to ascertain the cubic contents of the material which was taken away, and then the next best thing is to see what is in the embankment made from it, and after making due allowances so to estimate the work done.

Clause 17 of the specification seems to make it plain, that by the contract this material was to be treated, for the purposes of payment, as ordinary earth.

The following is the language of clause 17 :—

“ 17. Excavation will be classed under three heads, viz. : *Solid Rock, Loose Rock, and Earth*, and will be paid for according to the following definitions :

“ 1st. All stones and boulders measuring more than 40 cubic feet, and all solid quarry rock, shall be termed *Solid Rock Excavation*.

“ 2nd. All stones and boulders measuring more than 14 cubic feet, and less than 40 cubic feet, and all loose rock, whether in situ or otherwise, that may be removed with facility by hand, pick or bar, without the necessity of blasting, shall be termed *Loose Rock Excavation*.

“ 3rd. All other excavation of whatever kind, with the exception of off-take ditches referred to in clause 13, shall be termed *Earth Excavation*.”

At all events the discussion about the meaning of the specifications might well have been avoided, and it is at best an endeavour to save by some argument, on the legal effect of a document, an outlay which could

and ought to have been saved without discussion, by learning, before locating and contracting for the construction of the road-bed, the nature of the material which was likely to be met with in the prosecution of the work. The serious omission to which we have here called attention would not have occurred had the Chief Engineer and his subordinates acted on the elementary principles of railway engineering.

Professor Rankine in his work on Civil Engineering describes the steps to be followed in Railway Engineering, placing first the reconnoissance or exploring of the country. Of this his language is :—

“The reconnoissance or exploring of the country by the engineers with a view to ascertaining in a general way the facilities which it affords for the proposed work, and determining approximately the best site or course for that work. In this process the engineer will pay attention to the geological structure of the ground, and the sources from which useful materials may be obtained.”

And he proceeds to give the order of the subsequent steps in such operations; amongst them that of *designs and estimates*. Before this step, however, he names as an earlier one that of *Trial pits and Borings*, of which he speaks as follows :—

“*Trial pits and Borings* will be proceeded with, while the levelling for the detailed section is in progress in order to ascertain the strata of the ground. Borings are the less costly, in time, labour and damage to ground, but pits are the more satisfactory to the engineer and the contractor. The results of the trial pits and borings may be marked with plan and sections for the use of the engineer.”

Before the works on these sections were offered to public competition, a large expense had been incurred in the operations of surveying parties to and fro over this country. It has been suggested that surveying parties sometimes failed to discover the nature of the soil, because in winter it is covered by ice and snow.

It is not urged, however, that it is impossible then to learn what is requisite, but merely that it cannot be done without taking more trouble than at other seasons. This is hardly a reason for omitting one of the first duties of engineers in preparing for the construction of a railway over a new and unbroken country.

Even this insufficient reason, however, is not according to the fact, for surveys had been made over the country between Lake Superior and Red River in various directions, in different years, in summer and in winter; and on no occasion, until after large amounts were called for beyond the expectations based upon the engineers' first estimates, was recourse had to

the boring implements well known to the engineering profession as a means of acquiring information, such as that to which we have alluded.

We feel constrained to say that the Engineering Department in this case failed in its duty to inform the Government upon facts which are well understood to be material to a correct judgment on the probable cost of a railway, and that there was no sufficient reason for such omission.

In the year 1875, Selkirk was fixed upon as the point at which the Canadian Pacific Railway should cross the Red River. It has been stated by the Honourable Mr. Mackenzie, that the decision as to this matter was left entirely in the hands of the Chief Engineer. The reasons given for the selection of Selkirk are as follows:—

1st,—It was available to navigation plying upon Lake Winnipeg.

2nd,—The banks were lower at that point than at other points nearer Winnipeg, so that a track might be more readily run down to the waters edge for the purpose of transhipment.

3rd,—That in its vicinity there was a considerable bay suitable for the harbouring of vessels through the winter; but the reasons which seemed to have had the greatest weight were:—

4th,—That, at the point of crossing, the Government held some 600 acres of land and,

5th,—That the Chief Engineer considered that point less liable to inundations than any point nearer Winnipeg.

The choice appears to have been an unfortunate one. Even as early as 1875, the Pembina branch being then in course of construction, it must have been evident that Winnipeg would attain considerable importance as a distributing centre. Section 14, moreover, having been placed under contract and considerably advanced before the adjoining section was finally located, a line from Rat Portage, *via* Falcon Lake to Winnipeg, which we conceive to be more eligible than the one adopted, was thereby sacrificed at a present loss, estimated by competent engineers, at not less than \$500,000, and a permanent disadvantage of some twenty miles additional length.

The following operations took place in the prairie region during the second triennial period, viz :—

	Explorations.	Exploratory Surveys.	Location Surveys.
1874.....	1	3	1
1875.....	2	2	1
1876.....	1	2	2
	4	7	4

Excepting as to the location *via* the Narrows of Lake Manitoba, which is dealt with in another place, there is nothing in respect of these surveys which seems to us to call for special comment. We, therefore, pass on to consideration of the Mountain district.

During the years 1874-5-6, eight explorations and twenty-nine instrumental surveys were made in British Columbia.

Only eight of the instrumental surveys appear to have been directed towards improving the projected route to Burrard Inlet, while the eight explorations and twenty-one instrumental surveys were made with a view to reach more northerly harbours.

We proceed to give a synopsis of these surveys for each year under the two distinctive heads above referred to, namely, those pointing to Burrard Inlet, and those having in view as a terminus Bute Inlet or more northerly harbours, viz. :—

Burrard Inlet.	Explorations.	Exploratory Surveys.	Revised or Location Surveys.
1874.....	—	4	2
1875.....	—	—	1
1876.....	—	—	1
Total.....	—	4	4

More Northerly Points.	Explorations.	Exploratory Surveys.	Location Surveys.
1874.....	5	1	1
1875.....	2	5	5
1876.....	1	4	5
Total.....	8	10	11

The Chief Engineer epitomizes the result of these operations in his Special Report of 1877, as follows :—

“ It is evident that from Tête Jaune Cache two courses only are open for the railway, the one in a north-westerly direction by the Fraser, the other, due south by the Albreda and the River Thompson. By either of these two routes, the lofty and defiant Cariboo Mountains may be flanked, and the great plateau in the interior reached. From this central plateau eleven routes diverge through depressions in the formidable Cascade range to seven distinct harbours on the Pacific coast.”

At this stage the Admiralty appears to have been applied to (in November, 1876), for information in respect of the character of the harbours referred to. Respecting this, the Chief Engineer makes use of the following language : “ In the search after reliable information upon the features of the coast line of British Columbia, it was considered that the officers of Her Majesty’s navy, who had served on the North Pacific Station, must have had repeated occasions to examine that coast, and more than any other class must possess that information *without which no harbour should be selected as the water terminus of the line.*”

It is a matter of surprise that the application for this information was not made at an earlier date. The opinions expressed by Her Majesty’s naval officers are so strongly in favour of Burrard’s Inlet and so adverse to the more northerly harbours, that the possession of their opinions at an earlier period might, and probably would, have saved the cost of many expensive surveying parties made in connection with these objective points.

When it is borne in mind that an average instrumental party involved an outlay of some \$30,000, and an average exploration, from \$8,000 to

\$9,000, it will be seen that the omission of these surveys would have saved a large amount of money.

During this triennial period, Bute Inlet appears to have been regarded as a probable terminus. To this end the contract granted to Mr. Barnard to build a telegraph line from Edmonton, along the located line of railway, to the existing telegraph system of British Columbia, was virtually suspended, and the contractor instructed to proceed from Tête Jaune Cache to Fort George.

As compared with Burrard Inlet, the position of Bute Inlet, as a terminal harbour, is, according to evidence, far inferior.

If the Seymour Narrows which separate the Island of Vancouver from the mainland were capable of being bridged at a reasonable outlay, the Bute Inlet route would become one worthy of consideration, as the only one which would permit of unbroken railroad communication to the Pacific harbours of the Island.

But, in 1872, an examination of this locality was made by Mr. Gamsby, and in 1874 the Chief Engineer reported as follows :—

“ Careful examination has established the fact that to reach Vancouver Island from the mainland the following clear span bridges would be required :

	Feet.
At Arran Rapids, clear span.....	1,100
“ Cardero Channel, 1st opening.....	1,350
“ “ “ 2nd “	1,140
“ “ “ 3rd “	640
“ Middle Channel.....	1,100
“ Seymour Narrows, 1st opening.....	1,200
“ “ “ 2nd “	1,350

“ The channels to be bridged are of great depth, with the tide flowing from four to nine knots an hour.”

Mr. Fleming, in another place, characterizes the bridging “ as not only formidable but without precedent.” He also states that, “ a great number of tunnels, varying from 100 to 3,000 feet in length, would be indispensable between Waddington Harbour and the entrance to Bute Inlet.

In view of these facts which were known in 1873, before any surveys had been made to points on the coast north of Bute Inlet, and in view of

the character of the navigation and the unsuitability of the more northerly harbours which, if not known, ought to have been ascertained, as the Chief Engineer himself explicitly admits in his special report of 1877, "before any "harbour should be selected as the water terminus of the line," and consequently before any expense in elaborate surveys in that direction was incurred, we think that the surveys of some of the eleven routes to the sea described by Mr. Fleming in his report of 1877, might have been well omitted.

At page 73, Mr. Fleming uses this language: "In considering the question of route in connection with that of the water terminus, the enquiry may be narrowed down, by rejecting all the projected lines and harbours except the most promising and important."

The tenor of Mr. Fleming's report is that the information derived from the Admiralty enabled the Engineering Department to see more clearly than before, the expediency or in expediency of carrying the railway to any particular one of the several harbours to which surveys on land had been made, and that some, at all events, of these harbours were altogether ineligible. We think it is to be regretted that the enquiry was not, in Mr. Fleming's words, "narrowed down" before large expenses were incurred on those surveys which for nautical reasons were futile.

Without assuming to particularize the individual routes which would have been known to be unnecessary had the information from the Admiralty been obtained before they were undertaken, we feel obliged to say that it was under the circumstances a duty to learn, in the early stages of the surveys, all that could be communicated from such an authentic source, and that no expense should have been incurred in running lines to those points which from their nature were impossible as termini.

In the table at the end of our report on engineering we have shown separately the various explorations and surveys directed to Burrard Inlet, as distinguished from those to more northerly points on the Pacific coast, as well as the probable cost of them.

Those to Burrard Inlet are stated at \$797,236; to other harbours, \$968,090. These figures are not given as exactly correct, but are based upon an average assumed to be applicable to the several kinds of examinations, as explained in a note to that table.

We have, in dealing with the first triennial period, mentioned that our judgment was against the system adopted at the beginning, of examining

the country generally by instrumental surveys rather than by simple explorations, but we have to say that the mistake of using instrumental surveys too freely was not confined to the first year or period of the surveys. We think the evidence shows that bare explorations have given information to the Engineering Department which was of great value, and, indeed, more reliable than it was on different occasions considered to be by the Chief Engineer. In 1874, a line was explored by Mr. Horetzky from Gardner Inlet across the Cascade range to Lake François, heights being taken by barometer only. This examination, according to Mr. Marcus Smith (page 175, in the Chief Engineer's report of 1877), "gave no promise of a practicable line."

In 1875, however, an instrumental survey was undertaken of the same route. We have seen the original profile of the line followed on this occasion.

A regular instrumental survey was made from Gardner Inlet up the Valley of the Kimano River to Lake François, on the east side of the Cascades, a distance of twenty-two miles.

From Gardner Inlet the line for the first nine miles runs up the valley of the Kimano, which is about half-a-mile in width, and is hemmed in between high precipitous mountains on either side, and rises by easy grades to the base of the mountain, 166 feet above the sea.

In the next ten miles the line abruptly ascends the face of the mountain defile at the rate of about 400 feet to a mile, to a pond on the summit, 4,019 feet above the sea. It then descends in about three miles to the level of Lake François, which is 2,776 feet above the sea, at the rate of 413 feet per mile.

A regular profile is given of this instrumental survey, with all the levels marked upon it in the most formal manner, as if dealing with a practicable line, and a projected tunnel twelve miles in length through the mountain range, ascending from the valley of the Kimano to Lake François at the rate of 238 feet in a mile.

The general features of the country through which this instrumental survey was made are so pronounced, and so well described in Mr. Horetzky's report of November, 1874, which appeared in that of the Chief Engineer for 1877, that we think it ought to have been evident, before the expedition was started, that no result could be reached beyond showing that

a railway on that line was not feasible, and that the consequence would be, as it was, no better than a waste of time and money.

Similarly in 1874, Mr. Horetzky, whose explorations were clearly conducted with much care and correctness, examined a route through the Cascade range from a lake on its eastern slope, to which he gave the name of Tochquonyala, thence westerly through a pass into the valley of the Kitlope River, and towards its mouth at the Gardner Inlet. In his report of this expedition he gives the respective elevations of the pass and of a portion of the valley near it, showing such a sudden fall (about 300 feet per mile for six miles) as to make a railway on that route impracticable; his language is: "I think the inference may be safely drawn that in this quarter no practicable route is to be looked for." An instrumental examination of this route was, nevertheless, ordered, and though the service was a hazardous one, Mr. Gamsby volunteered and was directed to undertake it. Early in 1876, he proceeded with a party to Gardner Channel. Some account of this expedition is found at page 176 of Mr. Fleming's report of 1877, and a more detailed account by Mr. Gamsby himself, commences at page 177.

The conclusions given by Mr. Gamsby are based on the supposition that some of his party reached the lake described as existing on the eastern slope of the Cascade range, and to which Mr. Horetzky had given the name of Tochquonyala, and he assumes to contradict the substance of Mr. Horetzky's report as to the height of the said lake, and the pass between it and the River Kitlope. The evidence shows as a matter of fact; and, although the latitude and the altitude of Mr. Horetzky's points, as well as a sketch of his route, had been given to Mr. Gamsby's party, that the latter gentleman failed to reach the objective points of his expedition. He assumed others at much lower elevations respectively, to be those he was instructed to find. The result of the expedition was unequivocal failure, without any advantage to compensate, in our opinion, for the expense unnecessarily incurred in projecting it.

The last triennial period, 1877-78-79, was devoted mainly to location in the west and construction in the east. The subject of surveys in the first triennial period—of location in the second—are such as elicit, in the consideration of them, various and often conflicting views. Involving as

these subjects do, questions of route, theories as to the modes of survey, the adequacy or the inadequacy of the means at the disposal of the Department, they open up a wide field of controversy. The subject is a large one; but all these matters having been finally decided, and definite action thereupon begun, the consideration of the propriety of official action thereafter is restricted within narrower limits. There remains, therefore, but little to be said in respect of the transactions of 1877-78-79. There were in all, during this period, fourteen explorations and twenty-five instrumental surveys. The parties were distributed as follows:—

	Explorations.	Instrumental Surveys.
Mountain Region.....	8	11
Prairie Region.....	5	3
Woodland, west of Nipigon.....	....	4
Woodland, east of Nipigon.....	1	7
	—	—
Total.....	14	25

In the mountain region the instrumental surveys, eleven in number, were, with one exception, confined to the Burrard Inlet route. Seven trial locations, covering the entire 493 miles, being made in 1877; three revised locations covering that portion of the line between Yale and Kamloops, in 1878, and a trial location along the Skeena in 1879. Of the eight explorations during the same period, two were made in 1877, and six in 1879.

They were as follows, during 1877:—

1. Exploration from Fort Simpson *via* Skeena River to Fort George, by Mr. Cambie.

2. Exploration from Fort George through Pine River Pass, by Mr. Hunter.

During 1879:—

3 Exploration by Mr. Cambie.

4 “ by Mr. McLeod.

5 “ by Mr. Horetzky.

6 “ by Mr. Dawson.

7 “ by Rev. D. M. Gordon.

8 “ by Mr. Hunter.

The object of these examinations, with the exception of Mr. Hunter's explorations in Vancouver Island, was to obtain definite data to determine

whether a northern route could be found, by Peace or Pine River, to Port Simpson.

The result was to confirm the general route projected during the first and second year's surveys *via* the valleys of the North Thompson and Fraser Rivers to Burrard Inlet, for a portion of which, tenders for construction were invited during the fall of the same year (1879).

In the prairie region, surveys by Mr. Lucas were made in 1877, between Selkirk and the South Branch of the Saskatchewan, for an alternative line; and an exploration by Mr. Marcus Smith to Lac la Biche and other points to the north of the Main Saskatchewan. No operations were undertaken in this region during 1878. Four explorations by Messrs. Eberts, Dr. Smith, D. C. O'Keefe and Professor Macoun were undertaken during 1879, with a view to obtaining a more extended knowledge of the characteristics of the various districts lying between Fort Garry and the Rocky Mountains. An exploratory survey was also made by Mr. Marcus Smith from Fort Ellice to the western boundary of Manitoba, and a second one by Mr. Murdoch, both in connection with the second 100 miles west of Winnipeg.

In the woodland region the following explorations and surveys took place during 1877-78-79:—

	West of Nipigon.		East of Nipigon.			
	Exploratory Survey.	Revised Location.	Exploration.	Exploratory Surveys.	Revised Surveys.	Trial Location.
1877.....				3		
1878.....		3			1	
1879.....	1		1	2		1
	1	3	1	5	1	1

Of the parties engaged west of Nipigon, three were engaged during 1878, in revising the location of the 185 miles between English River and Keewatin, known as sections 41 and 42, both of which sections were placed under contract during March, 1879. An exploratory survey was also made between Thunder Bay and Nipigon.

East of Nipigon the following operations took place, viz :—

In 1877, three instrumental surveys were made from French River, two westerly and one easterly.

In 1878, one revised survey in connection with the Canada Central Railway.

In 1879, Mr. Austin ran a line from Callander, north-westerly some sixty-three miles, with which an exploration by Mr. Brunel, *via* Spanish River to Sturgeon River, made the same year, connected.

A survey of French River was also made by Mr. Bender.

The expenditure for the third triennial period, on account of surveys, was \$754,793.

Since the inception of the surveys some thirty-four parties in all were engaged (*i.e.* several each year) in examining the country between Thunder Bay and the Ottawa; of these but six are described as explorations. If the cost of these parties was up to the average, this portion of the survey cannot have cost less than \$850,000.

This is the territory respecting which Mr. Fleming reports in 1872 that, "No serious engineering difficulties have been met with in passing from the valley of the Ottawa to the country north of Lake Superior."

The general direction of a practicable route having been ascertained (which we think might have been done by well directed explorations requiring an outlay of from \$8,000 to \$10,000 each), there would seem to have been no necessity for this further lavish expenditure, until construction having been decided upon, a definite location was required. In 1877, the section of railway between Cross Lake and Rat Portage, some thirty-seven miles, was placed under contract, and later on in the same year the extension of the Pembina Branch northward, from Winnipeg to Selkirk, was entered upon.

Both these contracts exceeded the estimated cost very largely. The excess in the latter case arose in part from other than engineering causes, and the matter is more fully dealt with under the head of the individual contract (5a). The greatly increased cost of the former, arose mainly from the fact that the quantities contained in the bill of works offered to tenderers were not even approximately ascertained. This feature has already been reported upon. Inasmuch, however, as a portion of the increased cost was

due to a change in the method of construction, a few words on this point may be advisable.

Tenders were invited for the construction of this section at three several times. The bill of works and specifications in each case contemplated a different mode of construction. The first provided for the cuttings approximately balancing the fills, resulting in a solid rock and earth road-bed throughout the entire length of the section. The estimated cost, however, was so great that this proposition was abandoned after the tenders were received, and a second advertisement was issued inviting tenders for the work upon the plan of a higher grade, the material from the cuttings to be used in filling the intervening gaps as far as they would do so, but not providing for further means of crossing the open spaces. Tenders were duly received, but none of them were accepted. A third advertisement was inserted in the fall of the year 1876, inviting construction upon the general plan just described, but providing, in addition, for the filling up of the land gaps with trestle-work, and the water stretches, which were numerous, with rock-cuttings, up to three feet above high-water level, and with trestle-work thereafter.

Soon after construction was entered upon, it was found that whenever the material from any cutting was in excess of the quantity required to fill the next void up to the specified height, the trestle-work would require forthwith to be erected in order to utilize the superabundant material in the next void, for which such material would be available, unless the contractor took the time and trouble necessary to move it over the natural undulation of the country; and in many cases several land voids would intervene, all of which would require to be trestled before the next water stretch could be reached. In respect of this, Mr. Whitehead stated that the proposed method of construction would have required twenty years for completion, that, in fact, it was impracticable. His views were placed before Mr. Rowan, the District Engineer, while he was being examined before us, and he said in relation thereto: "I think there is some truth in that."

When the work was offered for construction, it was thought by the Government Engineers, that very little earth could be found along the line. Mr. Ruttan, however, the contractor's engineer, as before mentioned, stated, in evidence upon this matter, that he saw, upon his first inspection of the line, that he could borrow all the material necessary for making the embankment.

Mr. Whitehead, therefore, offered to substitute earth-work for trestle-work without making any charge for extra haul. His offer was recommended by the District Engineer, and, being approved by Mr. Fleming, the Honourable the Minister of Public Works submitted a memorandum authorizing the change to His Excellency in Council for consideration.

Mr. Fleming was on the eve of taking his departure for Europe, and before leaving he saw Mr. Rowan, who was then at Ottawa, and informed him that his recommendation was approved by the Department, and that a memorandum had been submitted to Council to authorize action thereunder. Council, however, neither adopted nor rejected the proposition at that period, and Mr. Rowan, not having received any further communication, thereupon returned to Winnipeg under the impression that he was, or would be, authorized to permit the contractor to proceed with construction in the manner proposed. This change is estimated by the Supervising and District Engineer to have increased the cost of the section to the extent of from \$200,000 to \$260,000. The further increase of some \$750,000 is considered by Mr. Carre to have been due to other causes.

His evidence on this point may be summed up in a few words, and the general tenor of the evidence of others confirms his testimony—viz., that the grades having been altered after the original quantities were estimated, the entire calculations based upon the first profile plan were inapplicable. The nature of the country, however, was such that no reliance could be placed on any calculations made from a centre line only.

Respecting this matter Mr. Fleming admits that, without cross-sectioning, the quantities arrived at would be "a mere guess." The evidence of all who have been examined shows beyond doubt that the quantities were not calculated from the cross-sections until after the contract was let; that the quantities contained in the bill of works submitted to tenderers were based upon a centre line only, and that therefore they were a mere guess.

The next sections offered for construction were those known as 41 and 42, comprising the 185 miles between the east end of contract 15, and the west end of contract 25.

Tenders were invited by advertisement in August, 1878, the time up to which they would be received being 1st January, 1879. Mr. Fleming, on being consulted by the Minister of Railways and Canals, informed him that sufficiently accurate information would not by that date be available to

enable parties to make intelligent tenders. The letting was for this reason twice postponed. As a consequence of the greater care exercised in this respect, the evidence leads to the belief that on these sections, for the first time in the history of road-bed construction on the Canadian Pacific Railway, the actual quantities and cost will, on completion, be considerably less than at first estimated. The probable reduction has, upon section 42, been stated at some \$1,500,000, of which about \$650,000 was expected to result from changes in location, and minor deviations effected without deterioration of the railway, and \$850,000 from modified design, by which the road-bed would be less permanent in character than was originally intended.

This latter item of saving, however, is likely to be reduced, inasmuch as solid earth embankment and rock-borrow foundations have been authorized in several places, where, at the time Mr. Schreiber's evidence was given, timber structures were proposed.

Several other contracts for road-bed construction were let during this period, viz. :

Contract No. 48, August 19, 1879.

“ “ 60, December 23, 1879.

“ “ 61, February 10, 1880.

“ “ 62, December 23, 1879.

“ “ 63, December 15, 1879.

“ “ 66, May 3, 1880.

These contracts were entered upon only a few months—with one exception less than six months before the date of our Commission. So that very few facts, and those of but little importance, have been presented before us in respect of construction. The bulk of the evidence taken as to these contracts has been in reference to the manner of letting, etc., and will be found under the head of the individual contracts.

One thing forces itself upon one's attention, however, in respect of the British Columbia contracts, namely, that though Mr. Marcus Smith had reported the route along the canyons of the Lower Fraser as requiring such heavy work as to be almost impracticable, it has really, after careful location, been let at a price no higher than that portion of the line in the woodland region between Cross Lake and Rat Portage.

It has been our duty to animadvert unfavourably in several instances, upon the engineering branch of the Department of Public Works having

charge of the surveying operations. It is with pleasure that we state that, during construction, the engineers have shown ability, zeal, and the strictest integrity in the supervision of the work.

The evidence shows that they fought inch by inch, and day by day, against what they thought to be attempted encroachments on the part of the contractors' engineers. We have felt that their determination to maintain the rights entrusted to their keeping, has in some cases led them to a strained construction of the specifications adverse to the contractors. Appeals were more than once made to the Chief Engineer or other superior officer by the contractor, which resulted in an interpretation more favourable to the contractor than the resident engineer was willing, without such authority, to allow.

Before closing our review of the engineering, it is our duty to call attention to serious difficulties which were always in the way of complete success in this branch of the undertaking.

Owing to the extent of each year's operations depending on the amount of money to be voted for that purpose at each session of Parliament, it was impossible to settle definitely upon the whole work to be undertaken until after the votes had passed, and to this may be partially attributed the fact, that the spring was frequently well advanced before many of the parties were definitely organized and took the field, the exception being those who had wintered out, and whose work, having been fixed the previous year, could be commenced without waiting for new arrangements at Ottawa. We think that the amount of work accomplished each season by the engineering force was not so great as it would have been, could the Chief Engineer have known, that whatever was expedient to be done might be arranged for unconditionally, and as early as was necessary to secure success.

Another difficulty was the composition of the staff of the several parties; this was frequently effected with but slight consideration as to the fitness of the persons.

Mr. Fleming's evidence is unequivocal upon the fact, and the consequences of places under him having been filled by political patronage. He testified decidedly that a private company, being free from this difficulty, could accomplish the work more efficiently and at a smaller cost than the Government. He said that in this case "men often had to be employed who were not too efficient;" meaning, as

we understood him, that they were not as efficient as they ought to have been; and he said they were selected not solely on their merits; that different nationalities and creeds had to be consulted under every administration, more especially on the engineering staff; that these, though the appointments were nominally by himself, as superior officer, were, in fact, invariably made by the Minister; and on being asked whether or not he had assumed to suspend or remove persons for inefficiency, he said he felt that persons employed through political influence, had to be kept at work unless for something notoriously wrong. He reached the conclusion, and retained it from year to year throughout, that because of persons being employed for political reasons, the work could have been done much more cheaply by a private company. He said he knew that patronage had to be respected, but he could not say that at any time he had brought this feature of the transaction to the attention of any Minister; and that until asked by us on the subject, no Minister or member of Parliament had put the question to him plainly. He remembered on one occasion representing to the Minister, that a proposed appointment was not likely to be a good one in the public interest. He gave us no name, but he said the person was appointed and turned out to be inefficient. In many other instances, when he did not remonstrate, persons frequently got positions which they were not well fitted to fill. And he said it was not easy to get inefficient men weeded out when once appointed. He added that he had no doubt that the public interest had suffered on account of the patronage being in the hands of a political party. Considering the tenor of this evidence, and the fact that instrumental surveys were frequently undertaken, where, in our view of the evidence, they might have been better omitted, we find it difficult to repress the suspicion, that various staffs having been filled from the influence thus described by Mr. Fleming, work was sometimes invented for their occupation, as an alternative less embarrassing than ending their employment.

Another serious drawback existed which was not due to the system but to individual circumstances. During the whole time that Mr. Fleming was the Chief Engineer of this railway, he was never enabled to give his undivided attention to it. For the first five of his nine years' service he was filling also the position of Chief Engineer to the Intercolonial Railway. That state of affairs ceased in 1876, and he testified that if he had not had both railways to superintend, he would undoubtedly have been able to visit the works on the Pacific Railway which the evidence shows he had

not done. After he was free from the Intercolonial Railway his health was so weakened that it led him to apply for leave of absence, and he was granted a year. He was recalled, however, before he got the benefit of this full term, and then returned the following summer to make it up. During three years after his release from the Intercolonial, he was absent on leave about nineteen months in Europe, and on another occasion he was in England on duty in connection principally with the purchase of steel rails. Thus it will be seen that throughout the period in which he held the position of Chief Engineer, he was not able to give much more than half his time to the active management of the engineering branch of the Canadian Pacific Railway. In our judgment this officer was overtaxed.

In view of this fact, and the impossibility of excluding political influence from the appointment of those who were to be nominally under his command, and the palpable truth that the different steps in a large Government work are not always devised with the sole object of pecuniary results, it must be admitted that the same success was not to be looked for in the engineering of the Canadian Pacific Railway, as might have been expected if the undertaking had been one, in which private funds alone were invested with a view to ultimate profit.

* It has been elicited by the evidence of various engineers who have been examined, that the different kinds of parties compared relatively as to numbers, as follows:—

Explorations.....	10 men.
Exploratory Surveys and Revised Surveys.....	40 do
Trial Locations.....	30 do
Location Surveys and Revised Locations.....	20 do

In making the calculation as to the proportionate cost properly chargeable against each district, the following data have been adopted:—

Exploration, = 1.
Exploratory and Revised Surveys, $(1 \times 4) = 4$.
Trial Locations, $(1 \times 3) = 3$.
Location Surveys and Revised Locations, $(1 \times 2) = 2$.

The cost of each exploration, on this basis, is as follows:—

During 1871-72-73	\$6,788 38
do 1874-75-76	8,524 36
do 1877-78-79	8,116 05

Hence the cost of the remaining surveys are approximately ascertained by multiplying these amounts by 4, 3 or 2 respectively, according to the character of the survey; and on that basis the results given upon the accompanying table are arrived at.

DETAILED STATEMENT of Explorations and Surveys, 1871 to 1879. 1871

District.	Engineer in Charge.	Description of Survey.	Initial Point.	Objective Point.	Remarks.
Mountain.	R. McLennan.....	Instrumental.....	Kamloops.....	Yellowhead.....	Via Albrechts and Cranberry Lakes.
	do.....	do.....	Quesnelle Mouth.....	Tête Jaune Cache.....	Through Cariboo District.
	W. Moberley.....	do.....	Shuswap Lake.....	Big Eddy.....	Via Eagle Pass and thence to the Boat Encampment.
	do.....	do.....	River Columbia.....	Kootenay Plains.....	Via Blaeberry River and Howse Pass.
Prairie.	J. Trutch.....	do.....	Lytton.....	Shuswap Lake.....	Via Frazer and South Thompson Rivers.
	do.....	do.....	Yale.....	Lytton.....	By Frazer River.
	F. Moberley.....	Exploration.....	Fort Garry.....	Rocky Mountains.....	
	Lloyd.....	Instrumental.....	Mattawa.....	Confuence of Montreal & Ottawa Rivers.....	
Woodland.	O'Hanly.....	do.....	Ottawa River.....	Head of Montreal River.....	
	Austin.....	do.....	Montreal River.....	Halfway to West Branch of Moose River.....	
	Gamsby.....	do.....	Last named point.....	Moose River.....	
	McConnell.....	do.....	Moose River.....	Small Black River.....	
	Armstrong.....	do.....	Small Black River.....	Long Lake.....	
	Johnstone.....	do.....	Long Lake.....	Mouth of Nipigon.....	
	J. Fleming.....	do.....	Nipigon.....	Lac des Iles.....	
	Carre.....	do.....	Lac des Iles.....	Canoe route to Lac Seul.....	
	James.....	do.....	Canoe Route.....	Lake of the Woods.....	
	JARVIS.....	do.....	Whitefish Bay, Lake of the Woods.....	Red River.....	
	Murdoch.....	do.....	Sault Ste. Marie.....	French River.....	
	A. McKenzie.....	Exploration.....	Ottawa River.....	North to James' Bay.....	Via Moose and Michipicoten River.

1872

S. Fleming.....	Exploration.....	Jasper Valley.....	Port Moody.....	Via Thompson Valley, including exploration of approaches to Athabaska and Howse Passes.
	Instrumental Survey.....	Lake William.....	Head of Quesnelle Lake.....	Along south shore.

[illegible]

DETAILED STATEMENT OF Explorations and Surveys, 1871 to 1879—Continued.

1874

District.	Engineer in Charge.	Description of Survey.	Initial Point.	Objective Point.	Remarks.
Mountain.	Jos. Hunter.....	Instrumental.....	Clearwater River.....	River Thompson.....	Via Blue River.
	E. W. Jarvis.....	do.....	do.....	Tête Jaune Cache.....	
	H. J. Cambie.....	do.....	Coquehalla Pass.....		
	J. Trutch.....	do.....	Similkameen Valley.....		
	do.....	do.....	Yale.....	Burrard Inlet.....	Via Frazer River.
	J. Hunter.....	Revised survey.....	do.....	Towards Lytton.....	
	E. W. Jarvis.....	Instrumental.....	Thompson Valley.....	Bute Inlet.....	Section of route.
	Jarvis, Bell & Gamsby.	do.....	Tête Jaune Cache.....	Lake Tatla.....	Via Fort George and River Chilcoah.
	M. Smith.....	Exploration.....	North Coast of Vancouver Island.....		
	C. Horetzky.....	do.....	Dean and Gardner Inlets.....	Eastern slopes of Cascades.....	
Prairie.	M. Smith.....	do.....	River Blackwater.....	Lake Francois.....	Via Salmon River and east flank of Cascades
	J. Hunter.....	do.....	Lake Francois.....	Around the Lake.....	
	Smith & Hunter.....	do.....	Narrows of Lake Manitoba.....	Fort George.....	Via Rivers Sulacoh, Neclaco and Stewart.
	E. P. Bender.....	Instrumental.....	For projected canal between Selkirk.....	For projected canal between Winnipegosis and Manitoba Lakes.	
	do.....	do.....	Borings.....	Livingstone.....	Via Narrows of Lake Manitoba.
	McLeod & Cunningham	Exploration.....	Livingstone.....	Easterly.....	For fuel and water.
	A. R. C. Selwyn.....	Instrumental boring.....	Emerson.....	Fort Garry.....	
	H. A. F. McLeod.....	Location survey.....	French River.....	River Ottawa.....	
	Brunel & Mortimer.....	Instrumental.....	Parry Sound.....	Ottawa.....	
	Hazlewood & Bell.....	do.....	Harbor Mouth of French Riv.		Via Carleton Place.
Woodland.	Brunel & Mortimer.....	do.....	Pic River.....	Lake Missanabe.....	
	W. A. Austin.....	do.....	Portage, Dawson Route.....	Lake Shebandowan.....	
	E. J. Mortimer.....	do.....	Thunder Bay.....	Lake Vermillion.....	
	W. Murdoch.....	do.....	Rat Portage.....	English River.....	
	H. A. F. McLeod.....	do.....	Lake Wabigoon.....	Rat Portage.....	
	W. W. Kirkpatrick.....	do.....	Selkirk.....	River Pic.....	
	H. Carre.....	Trial location.....	Nipigon River.....	Lake Shebandowan.....	
	T. J. Thompson.....	Instrumental survey.....	Thunder Bay.....		
	W. Murdoch.....	Trial location.....			

1875

E. W. Jarvis.....	Exploration.....	Upper Frazer River.....	Edmonton.....	Via Smoky River Pass.
H. J. Cambie.....	do	Homathco River.....	Easterly.....	By East Branch.
C. H. Gamsby.....	Location survey.....	Bute Inlet.....	Mouth of East Branch of River Homathco.....	
H. J. Cambie.....	Trial location.....	East Branch of Homathco.....	Lake Tatla.....	Via Lake Tatlayaco.
H. P. Bell.....	do	Central Plateau.....	River Blackwater.....	Via River Nazco.
do	do	River Blackwater.....	Near Fort George.....	Via Chilcoah and Stewart Rivers.
do	Instrumental.....	Along Rivers Stewart and Frazer.....		
G. A. Keefer.....	Location survey.....	Yellow Head Pass.....	Tête Jaune Cache.....	
Jos. Hunter.....	Instrumental.....	Dean Channel.....	Blackwater Valley.....	By Salmon River.
C. Horetzky & Trutch	do	Kemano Bay.....	to East slope of Cascades.....	
J. Trutch.....	do	Vancouver Island Line.....		
Harris.....	do	Esquimalt.....	Nanaimo.....	
J. Hunter.....	do		Livingstone.....	Subsequently made exploration from Livingstone to Jasper Valley.
McLeod.....	do		towards River Brazeau.....	
D. E. R. Lucas.....	Location survey.....	Selkirk.....	Battleford.....	
McLeod.....	do	Rivers Maligne and Rocky	Root River.....	
D. E. R. Lucas.....	Exploration.....	Livingstone.....		
H. N. Ruttan.....	Instrumental.....	thence.....		
H. J. Mortimer.....	do	Soundings of Lakes on Dawson Route.....	Sturgeon Falls.....	By Shebandowan.
E. G. Garden.....	do	Lake Windigoostigan.....	River Oskondiga.....	
H. J. Mortimer.....	do	do	Sturgeon Falls.....	
W. W. Kirkpatrick.....	do	Lake Manitou.....	Little Wabigoon River.....	Harbour survey.
do	do	Lake Vermillion.....	Pic River.....	
T. Ridout.....	do	French River.....	River Wabigoon.....	Via Rivers Savanne and English.
O'Hanly.....	Exploration.....	Sault Ste. Marie.....		
Baily & Scott.....	Instrumental.....	Sunshine Creek.....		

1876

C. H. Gamsby.....	Exploration.....	Gardner Inlet.....	Kitlope Valley.....	In sections.
J. Trutch.....	Trial location.....		Fort George.....	By Western Branch.
G. A. Keefer.....	do	Moose Lake.....	Blackwater Falls.....	Via Salmon River.
H. P. Bell.....	do	River Chilcoah.....	Mouth of Chilcoah.....	
D. McMillan.....	Instrumental.....	Dean Channel.....	53rd mile up Salmon River.....	
do	do	do	54th mile up Homathco.....	
J. Hunter.....	Trial location.....	Waddington Harbor.....	Lytton.....	
W. T. Jennings.....	Revised location.....	Yale.....	South and West.....	
C. H. Gamsby.....	do	Lake Francois.....		
H. J. Cambie.....	Instrumental.....			
M. Smith.....				

Mountain.

Prairie.

Woodland.

Mountain.

DETAILED STATEMENT OF Explorations and Surveys, 1871 to 1879—Continued.

1876.

District.	Engineer in Charge.	Description of Survey.	Initial Point.	Objective Point.	Remarks.
Prairie.	D. E. R. Lucas.....	Location survey.....	Edmonton.....	River McLeod.....	Via Jasper Valley.
	do.....	Instrumental.....	River McLeod.....	River Athabaska.....	
	H. N. Rutlan.....	Location survey.....	River Myette.....	River Assiniboine.....	
	do.....	Instrumental.....	River Assiniboine.....	Down Athabaska Valley.....	
Woodland.	H. A. F. McLeod.....	Exploration.....	Willow Hills.....	Buffalo Coulee.....	By Dog Lake. (Towards). do do
	R. McLennan.....	Location survey.....	River Myette.....	Yellow Head Pass.....	
	W. A. Austin.....	Trial location.....	Thunder Bay.....	English River.....	
	Brunel & Mortimer.....	do.....	River Myette.....	English River.....	
	E. G. Garden.....	do.....	English River.....	River Wabigoon.....	
	L. G. Bell.....	Exploration.....	Lake Vermillion.....	Lake Vermillion.....	
	J. L. P. O'Hanly.....	do.....	Located line.....	Rat Portage.....	
	Ridout & Horetzsky.....	do.....	River Pic.....	Nepigon.....	
	H. D. Lumsden.....	Trial location.....	French River.....	French River.....	
			Cantlin's Bay, French River	River Pic.....	

1877.

Mountain.	H. P. Bell.....	Trial Location.....	Tête Jaune Cache.....	Burrard Inlet.....	In seven sections.
	D. McMillan.....				
	E. E. Perry.....				
	A. Brunel.....				
Prairie.	G. A. Keefer.....	Exploration do Instrumental.....	Port Simpson.....	Fort George.....	
	W. T. Jennings.....				
	C. H. Gamsby.....				
	H. J. Cambie.....				
Prairie.	Jos. Hunter.....	Exploration.....	Pine River Pass.....	South Branch of Saskatchewan River.....	
	D. E. R. Lucas.....				
Prairie.	M. Smith.....	Exploration.....	North of Main Saskatchewan River.....		

Woodland.		Instrumental		Lake Nipissing.....		Lake Superior.....	
F. Ridout.....							
C. Horetzky.....							
H. A. F. McLeod.....							
1878.							
H. J. Gamble.....		Revised location...		Yale.....		Kamloops.....	
W. T. Jennings.....							
G. A. Keefer.....							
C. H. Gamsby.....		do		Rat Portage.....		English River.....	
D. E. R. Lucas.....							
H. D. Lumsden.....		Revised survey to de-					
W. Muddock.....		termine eastern ter-					
		minus					
1879.							
G. A. Keefer.....		Trial Location.....		Head of Work Inlet		Up River Skeena.....	
H. J. Gamble.....		Exploration		Port Simpson		Lesser Slave Lake.....	
H. A. F. McLeod.....		do		do		Battleford	
C. Horetzky.....		do		Peace & Pine River District			
Dr. G. M. Dawson.....		do		Geological Examination		Edmonton	
Rev. D. M. Gordon.....		do		Port Simpson		Edmonton	
Jos. Hunter.....		do		Vancouver Island		Edmonton	
Prof. Macoun.....		do		Livingstone		Edmonton	
M. Eberts.....		do		112th Meridian eastward			
				and north of Lac la			
				Biche		River Saskatchewan.....	
Dr. Smith.....		do		Lake Winnipegosis			
D. C. O'Keefe.....		do		North of Saskatchewan as			
				far as Churchill River.....			
M. Smith.....		Instrumental.....		Western boundary of Mani-		Westerly 100 miles	
				toba			
Murdoch		do		Alternative line		Easterly	
R. McLennan.....		do		Thunder Bay.....		North-westerly 63 miles.....	
C. H. Gamsby.....		do		Callender		Sturgeon River.....	
W. A. Austin.....		do		French River.....			
E. P. Bender.....		do		Spanish River.....			
A. Brunel.....		Exploration					
Woodland.		Prairie.		Mountain.		Woodland.	

CONTRACTS.

We now proceed to consider matters more particularly pertaining to contracts.

Some seventy-two in all were entered upon before the date of our Commission, which may be grouped as follows, viz. :—

Telegraph Construction. Nos. 1, 2, 3, 4.

Road-bed Construction :

Woodland region—

Between Ottawa and Nipigon. Nos. 12, 16, 37.

Between Nipigon and Fort Garry. Nos. 5, 5a, 13, 14, 15,
25, 33, 41, 42.

Prairie region. Nos. 48, 66.

Mountain region. Nos. 60, 61, 62, 63.

Steel Rails. Nos. 6, 7, 8, 9, 10, 11, 44, 45, 46, 53, 54, 55.

Bolts, Nuts and Spikes. 29, 30, 31, 32, 35, 47, 50, 51.

Transportation of Rails. Nos. 17, 18, 20, 21, 22, 27, 28, 34, 39, 52, 69, 70.

Minor Construction—Ties, Engine-houses, Station buildings, &c. Nos.
19, 23, 24, 26, 32a, 36, 38, 40, 49, 56, 57, 58, 59, 64.

Equipment, &c. Nos. 65, 67, 68.

Operating—Pembina Branch. No. 43.

The expenditure upon construction for each fiscal year, from 1st July, 1871, to 30th June, 1880, is given below ; and (for convenience of reference) the figures already given in respect of engineering are here reproduced in a parallel column.

Year.	Surveys, Explorations and Engineering.	Construction, including Fort Francis Locks.	Grand Total.
	\$ cts.	\$ cts.	\$ cts.
1871	30,148 32	.....	.....
1871-1872	489,428 16	.....	.....
1872-1873	561,818 44	.....	.....
1873-1874	310,224 88	.....	.....
1874-1875	474,529 19	1,071,712 48	.....
1875-1876	791,121 19	2,555,445 87	.....
1876-1877	754,624 57	936,525 40	.....
1877-1878	322,695 42	1,905,677 71	.....
1878-1879	281,123 92	1,959,161 55	.....
30th June, 1880.....	150,973 68	3,893,549 04	.....
Total	4,166,687 77	12,322,072 05	16,488,759 82

TELEGRAPH LINES.

The first contracts made in connection with the Canadian Pacific Railway related to the construction of telegraph lines. The Statute entitled "An Act to provide for the construction of the Canadian Pacific Railway" was assented to on the 26th of May, 1874, (37 Vict., Chap 14), and contained the following sections concerning works which embrace the construction of the telegraph line :—

"Section 5. A line of electric telegraph shall be constructed in advance of the said railway and branches along their whole extent respectively, as soon as practicable after the location of the line shall have been determined upon."

"Section 7. The said Canadian Pacific Railway and the branches or sections hereinbefore mentioned and the stations, bridges and other works connected therewith, and all engines, freight and passenger cars and rolling-stock, shall be constructed under the general superintendence of the Department of Public Works,"

Under the date of 18th June, 1874, the Government issued the following advertisement:—

“A.

“Canadian Pacific Railway Telegraph Line.

“Proposals are invited for the erection of a line of Telegraph along the general route of the Canadian Pacific Railway, as may be defined by the Government.

“The proposals to embrace the following points, viz.:

“The furnishing of all materials, labour, instruments and everything necessary to put the line in operation.

“The maintenance of the line for a period of five years after its completion.

“In the wooded sections, the land to be cleared to a width of 132 feet, or such greater width as may be necessary to prevent injury to the Telegraph from fires or falling trees.

“Distinct proposals to be made for each of the following sections: such proposals in each case to state the time when the party tendering will undertake to have the Telegraph ready for use:—

“(1.) Fort Garry to a point opposite Fort Pelly, about 250 miles.

“(2.) Fort Garry to a bend of the North Saskatchewan, about 500 miles.

“(3.) Fort Garry to a point in the longitude of Edmonton, about 800 miles.

“(4.) Lac la Hache, or other convenient point on the existing telegraph system in British Columbia, to Fort Edmonton, about 550 miles.

“(5.) Fort Garry to Nipigon, Lake Superior, about 420 miles.

“(6.) Ottawa to Nipigon, Lake Superior, about 760 miles.

“The above distances are approximate. They are given for the general guidance of parties desiring information.

“Any increase or diminution in the ascertained mileage after construction will be paid for or deducted as the case may be, at a rate corresponding with the sum total of the tender.

“Parties tendering must satisfy the Government as to their ability to carry out the work and maintain it for the specified time.

“Proposals addressed to the Minister of Public Works will be received up to the 22nd day of July next.

“By Order,

“(Signed)

F. BRAUN,

“Secretary.

“Department of Public Works,

“18th June, 1874.”

Under the same date a memorandum was prepared as follows:—

“MEMORANDUM.

“Information to Parties Proposing to Tender.

“It is deemed best to make no binding stipulations as to the form of proposal, so that parties tendering may be at liberty to state their own terms and conditions, leaving the Government to accept the offer which in the interest of the public may be found most advantageous.

"At the same time it is considered advisable to furnish some data for the guidance of parties tendering in order that proposals may be made on the same basis and be uniform in essential points.

"The following is, therefore, with this object in view, submitted :—

"1st. It is intended that the Telegraph shall be built along the line to be adopted by the Government for the railway across the continent.

"2nd. The general character of the country to be traversed by the railway is described in the reports relating to exploratory surveys recently published.

"3rd. The several routes now under consideration and survey are also referred to in the above reports.

"4th. When the route is adopted by the Government on any particular section, the line to be followed by the Telegraph will be defined on the ground by Government officers.

"5th. Through forest the timber must be cut down and completely burned (cleared) to a width of two chains (132 feet) to prevent injury to the Telegraph from falling trees or fire ; at the option of the contractor valuable timber may be cut in lengths, hewn, piled and reserved at his risk.

"6th. Along the cleared ground a pack trail or road to be made for the purpose of carrying material for constructing the Telegraph, and for effecting repairs.

"7th. Through forest the poles should be of moderately large dimensions and of the best available timber to be had in each locality.

"8th. In prairie sections, when suitable timber for permanent poles cannot be obtained until the railway be constructed, and the means of conveying them from a distance thus provided, the poles may be of an average light description, and of such timber as can most conveniently be procured.

"9th. In forest sections the poles may be erected 132 feet apart, and the wire to be used may be that known as No. 11.

"10th. In prairie sections, the poles may be erected 176 feet apart, and the wire to be used may be that known as No. 9.

"11th. Each tender will specify the kind of insulator, as well as all other apparatus and materials proposed to be used.

"12th. Parties tendering may stipulate for maintaining and operating the line for five years, or a longer period.

"13th. On account of the difficulties in the way of transporting building material, it is not expected that the Telegraph will, in the first place, be so permanently constructed as could be desired. The main object, however, is to provide a pioneer line throughout the whole extent of the country, to assist in the building of the railway and settlement of the country. On the completion of the railway through any section, the Telegraph may then be reconstructed under new arrangements.

"14th. In the advertisements the sections are placed in the order in which parties tendering may propose to finish the erection of the Telegraph, and they are at liberty to make a distinct proposal for each separate section, or for the whole line.

"15th. The whole of the section between Lake Nipissing and Fort Garry is wooded, with the exception of about 30 miles of prairie east of the Red River.

"16th. Between Fort Garry and Fort Pelly the country is partly wooded and partly prairie ; the exact proportions are not yet known.

"17th. Between Fort Pelly and Edmonton the country is prairie.

"18th. Between Fort Edmonton and the telegraph system in British Columbia, the country is generally wooded, although some mixed prairie and woodland is met west of Fort Edmonton, as well as unwooded bunch grass land in portions of the central plateau of British Columbia.

"19th. In the valley of the River Thompson there is a growth of fine timber from 6 to 10 feet in diameter. It will not be necessary to clear in that locality to the full width of 132 feet, it will be sufficient to clear and burn up the underbrush and lower branches of the trees so as to render the telegraph secure from damage.

"20th. The advertisement describes the 6th section as extending from Nipigon to Ottawa, but the object being to connect the Pacific Telegraph Line with the seat of Government, it will be sufficient to make a connection with the telegraph system of Ontario at the most convenient point. It is reported that a telegraph line will be completed to the south-east angle of Lake Nipissing before the close of this season. The distance from Lake Nipissing to Nipigon is about 420 miles.

"21st. It should be understood that section No. 1 is embraced in section No. 2, and both are covered by section No. 3.

"22nd. Tenders should give a distinct rate per mile for the line through wooded and prairie land respectively for the sections where both exist.

"DEPARTMENT OF PUBLIC WORKS,

"18th June, 1874."

At the time of receiving tenders the location of the railway along which the telegraph line was to be erected, had not been determined on.

On the 22nd day of July, the day named for the final reception of the tenders, a large number had been received.

In the Department of Public Works the opening of tenders was occasionally postponed beyond the last hour named for receiving them, in order to allow for the arrival of mails which might be carrying some, and which might be delayed without the fault of the sender. In this instance they were not opened till the sixteenth day after that named in the advertisement. On the 7th August, 1874, Mr. Trudeau, the Deputy Minister, Mr. Braun, the Secretary, and Mr. Fleming, the Engineer-in-Chief, met for the purpose of ascertaining the contents, and a record of the combined judgment of these gentlemen upon the substance and meaning of each offer was then made; this original document was produced before us (exhibit 1). (See page 2, Blue Book Return to Commons, 1st. April, 1876)

It contains one column for the names of the tenderers, one for each section and one for the whole line, and particulars are given concerning each section or the whole line in the column pertaining thereto.

Subsequently on the 12th August, Mr. Fleming submitted a report in which he points out the general bearing of the tenders as a whole. (See Blue Book Return to Commons, 1st April, 1876, page 21.) In it he says:

"It is clear from the above that if the work can be completed for the lowest tenders it would be best to let the contracts by sections."

The Government proceeded accordingly to deal with the works of the telegraph line by sections.

CONTRACT NO. 1.

Telegraph Construction.

By this contract, dated 17th October, 1874, John W. Sifton, David Glass and Michael Fleming undertook to construct the telegraph line between Fort Garry and a point opposite Fort Pelly, "agreeably to the true intent and meaning of the specification or advertisement and memorandum" attached to the said contract and otherwise as described in the said contract, together with station houses, and to "maintain the line in good running order for a period of five years from the date of completion," receiving \$492 per mile through woodland, and \$189 per mile through prairie land, considered then to be equal to a total of \$107,850 for the construction and also the profits of the line, together with \$16 per mile per annum for the operation and maintenance of the line,—which last item was then estimated to be equal to \$20,000.

The advertisement shows that for the purpose of receiving tenders the whole of the telegraph line, between the then existing telegraph system in British Columbia on the west, and Ottawa on the east, had been divided into four parts, and numbered as sections, in the following manner:—

Ottawa to Nipigon, Lake Superior, (No. 6.)

Nipigon, Lake Superior to Fort Garry, (No. 5.)

Fort Garry to Edmonton, (No. 3.)

Edmonton to the British Columbia system, (No. 4.)

A separate tender was invited for each of these sections, as well as one for the whole line.

In addition to the above divisions of the line, Section 3 was subdivided in two ways; by one way into two parts, of which the easterly, that between Fort Garry and Fort Pelly, was designated Section 1. By another way into two parts, of which the easterly, that between Fort

Garry and the bend of the North Saskatchewan River, was designated Section 2. And by the same advertisement tenders were invited for each of these easterly parts of Section 3; but none were asked for either of the westerly parts of the said sub-divisions.

The effect of this scheme was that if any tender for Section 1 or 2 should be accepted, the westerly part of Section 3 would be left without any offer concerning it; and it is for such a part that the contract next after this, was made with Richard Fuller, the easterly part alone being provided for in the contract now under consideration. Contracting separately for different portions of Section 3 was not the course first decided on. The lowest tender for the whole of it was accepted, and it was only after the Government found such tender to be unavailable, that letting the work by sub-division was entertained.

In our report on Contract 2, we discuss the method finally adopted for constructing and maintaining the line over that distance known as Section 3, and in the meantime we confine our remarks, as far as practicable, to the matters which affect the contract for Section 1, irrespective of any means of finishing either the whole or the residue of Section 3.

On August 10th, 1874, Mr. Fleming made a report (see page 10 of the Blue Book Return to Commons, 1st April, 1876), which was accompanied by sheets, "intended to show by simple inspection the comparative value of each tender, for each section, and for the whole line."

Each sheet refers to a distinct portion of the line; sheet No. 1 to Section No. 1, for which he states the six lowest proposals to be as follows:—

Tender.	Construction.	Maintenance per Annum.	Time for Completion.
	\$	\$	
R. Fuller, Winnipeg	38,750	6,000	This year.
H. P. Dwight, North-West Tel. Co.	56,250	7,500	1st September, 1875.
Waddle & Smith, Kingston	106,250	\$3,000 with profits....	500 miles a year or more.
J. Sifton, Glass & Fleming, Ottawa	107,850	.....	November, 1874.
Mackenzie, Grier & Co., Toronto	115,750	\$70,000 whole line....	1st September, 1875.
Mitchell, McDonald & Gough, Toronto	154,200	\$265,000 do ...	31st December, 1874.

In this report the firm of Sifton, Glass & Co. get for the first time a standing in the competition for Section 1. In the general schedule of the 7th August, 1874, prepared under the judgment of the three officials before named, the tender of this firm was held to apply to nothing less than the whole line. In the column appropriated in that schedule to the whole line, there is this memorandum: "\$1,290,000, including maintenance; complete 22nd July, 1876. Average cost, \$629 forest; average cost, \$259 prairie."

In other columns dates are given at which they propose to finish specified sections; in that for Section 5 is this memorandum: "Complete 22nd July, 1875." In that for Section 1: "Complete 22nd November, 1874." But in the column for Section 1 there is no reference to a price.

There is nothing to show why the combined judgment of these three officials was overruled, and why Mr. Fleming alone gave this firm a standing, which when in concert with the Deputy Minister and the Secretary of the Department, he did not accord to them. All that can now be ascertained upon this is that after Mr. Fleming's report of 10th August, Sifton, Glass & Co. were assumed to be tenderers for Section 1. The following is their tender in full:—

"In the matter of the Canadian Pacific Railway telegraph line about to be contracted for by the Government of the Dominion of Canada.

"1. We, the undersigned residents of the Province of Ontario, make the following proposal to the Government of the Dominion:—

"2. We will do the whole of the work along the proposed line, including all the sections thereof, and comprising the finding of the material for and the erection of 'The Telegraph Line.'

"3. The clearing of the roadway, the preparation of the pack trail, and all other matters pointed out in the advertisement and information for parties proposing to tender.

"4. We will have the section between Fort Garry and Fort Pelly completed and in working order by the 22nd of November, 1874.

"5. We will have the section between Fort Garry and Nipigon finished by the 22nd of July, 1875.

"6. We will have the whole line completed and in working order by the 22nd of July, 1876, for the sum of—

"7. One million two hundred and ninety thousand dollars; this includes maintenance.

"8. The wire, insulators and instruments to be of the very best quality. Substantial comfortable station houses of log or frame with shingle or thatched roofs to be erected at distances of not less than fifty miles apart, along the line; location of station houses to be designated by the Government.

"9. This tender to include a complete clearing of the one hundred and thirty-two feet wide, the same as for cropping. But if only roughly underbrushed, and trees cut, removing

trees and brush from centre so as to make a trail, and keep fires from the posts, with trees twenty feet from centre and leaning out from the wire not cut down; then seventy-five dollars per mile to be deducted from the wood lands.

"10. The assumed length of the whole road, from Lac la Hache, or to connect with the telegraph system of British Columbia to Lake Nipissing, or to connect with the telegraph system of the Province of Ontario, is 2,190 miles, of which 1,485 is assumed to be wood, and seven hundred and five (705) miles prairie.

"11. The average cost per mile for wood land would be \$627, for everything including telegraph clearings, pack trail, station houses, insulators, instruments, tools, etc., all of the best description; but the actual cost of each mile will vary according to the location of the forest.

"12. The average cost per mile for prairie land will be \$259, including everything as per advertisement and information for parties proposing to tender, but the actual cost per mile will depend much upon the location; for instance, the work from Fort Garry can be done much more cheaply than the sections further in the interior.

"13. In our estimate we place the wood land from Fort Garry to Winnipeg River, and from Fort Garry to Fort Pelly, at \$492 per mile, also the prairie land within a distance of 250 miles of Fort Garry, at \$189 per mile.

"14. We are prepared to proceed at once with the work, and if the contract is awarded to us will lose no time in carrying it forward under the direction and to the satisfaction of the Government.

"15. We will be glad to give full information on every subject in our power if requested so to do.

"Dated at Ottawa, this 22nd day of July, 1874.

(Signed) JOHN W. SIFTON, [Seal.]

" DAVID GLASS, [Seal.]

" MICHAEL FLEMING, [Seal.]

There is no allusion in this tender to a price for Section 1 as such. The document purports to give some information, and offers to give still more upon matters not necessary to mention, in order to convey a substantive offer. The tenderers say that in their estimate they place the wood land from Fort Garry to Winnipeg River, and from Fort Garry to Fort Pelly, at a certain sum per mile. There was no section corresponding to the distance between Fort Garry and Winnipeg River, and it does not seem to us reasonable to say that these remarks amounted to a tender for the distances, or either of them, to which they thus allude.

Neither does the proposal to complete Sections 1 and 5, respectively, within stated times, support the view that they were tendering for less than the whole line. Mr. Sifton, in his evidence, stated that this reference to the time of completing Section 1 was made only on the understanding that his firm should get the whole line.

On the 6th October, 1874, the Secretary of the Department telegraphed to Messrs. Sifton, Glass & Co., asking if they were prepared to contract for Section 1. Two days afterwards they sent a message to him enquiring "Does Section 1 extend from Fort Garry to Edmonton."

The transaction of the Department with Messrs. Sifton, Glass & Co., so far as it concerns Section 1, may be divided into two branches: (1.) Treating them as tenderers for that section. (2.) The terms finally granted to them. As to the first branch, we think it clear upon the evidence that the Department founded this contract upon the theory that in the public competition of July, 1874, Messrs. Sifton, Glass & Co. had made a distinct offer for the construction and maintenance of Section 1. It is not necessary, therefore, to consider how far it would have been advisable to enter upon negotiations disconnected with that competition.

We agree with the combined judgment of the Deputy Minister, the Secretary and the Chief Engineer on this subject, as recorded at the first consideration of the tenders on the 7th day of August, viz. that the tender of this firm related to the construction and maintenance of nothing less than the whole line.

We think there was no more ground for the Chief Engineer interpreting it afterwards as a tender from Fort Garry to Fort Pelly, than for calling it a tender from Fort Garry to Winnipeg River. The same language is used concerning each of these distances, and as there was no section from Fort Garry to Winnipeg River, it follows that the said language ought not to be construed as applying to any of the advertised sections for which separate offers might be made.

Assuming, however, that it was competent for the Department in this case, without breach of faith to other competitors, and for other grounds not disclosed by the evidence, desirable to treat the tender in question as a distinct offer for Section 1, we have not found in that document, or in any other evidence, the reason for granting to Messrs. Sifton, Glass & Co., terms so advantageous as those covered by this contract.

In order to consider this branch of the transaction, it will be necessary to recall Mr. Fleming's report of 10th August, 1874, in which he gave the prices asked by the six lowest tenderers, and ranked them as follows:—

1. R. Fuller.
2. H. P. Dwight.

3. Waddle & Smith.
4. Sifton, Glass & Co.
5. Mackenzie, Grier & Co.
6. Mitchell, McDonald & Gough.

Fuller's offer could not be utilized for reasons explained in our report on Contract 2; the one finally made with him for the residue of Section 3, after deducting this Section 1.

On the 16th September, 1874, the Secretary of the Department enquired whether Mr. Dwight was prepared to carry out his offer for Section 1. On the next day Mr. Dwight answered in the negative. This, according to the ranking by Mr. Fleming before mentioned, and contained in the report of the 10th August, left Waddle & Smith's tender the only obstacle to treating with Sifton, Glass & Co.

The offer of Waddle & Smith was, as stated in Mr. Fleming's report before mentioned, \$103,250 for construction, and \$3,000 per annum for the five years, with profits for maintainance, they finding offices at an average distance of twenty-five miles apart. It appears to have been decided that this ought not to be accepted, though a better offer for the Government than the final one by the successful firm. A report of Mr. Fleming, dated 13th October, 1874, purports to give a reason for this decision. This report, however, was made several days after the letter of Mr. Braun to Messrs. Sifton, Glass & Co., enquiring on 6th October, if they were prepared to contract, and after their answer in the affirmative. Mr. Fleming's reason is as follows: "It has already been determined not to award two sections to Messrs. Waddle & Smith."

This remark has reference to the following circumstances:—Waddle & Smith had made the lowest eligible tender for Section 4, as well as for Section 5. In a report of Mr. Fleming, of 12th August, 1874, hereinbefore alluded to, and in which he recommended, amongst other things, the letting of specified sections on specified tenders, he made the following remarks, concerning Section 4, which extended from the telegraph system of British Columbia to Edmonton:—

"The next lowest is the tender of Waddle & Smith, of Kingston; but as these gentlemen are the lowest for Section 5, which, if awarded to them, would require all their energies to complete it, and as Section 5 extends from Fort Garry to Lake Superior, while Section 4 is for a great extent beyond the Rocky Mountains, I do not think it would be advisable to place both sections in the hands of the gentlemen last referred to."

This language conveys to us the idea, that Mr. Fleming's objection to the award of the two sections to Waddle & Smith, was based upon the great intervening distance between Sections 4 and 5, and we do not see that the adoption of this last mentioned report of Mr. Fleming determined that two sections should not in any case be awarded to Messrs. Waddle & Smith, particularly if they were, as in this case, adjoining sections, with Fort Garry, the best base of supplies as a common terminus. It decided no more than that two named sections, one from Fort Garry eastward and the other from Edmonton westward, ought not to be awarded at the same time to Waddle & Smith. Mr. Trudeau in his evidence suggests another reason for passing over Waddle & Smith's tender for Section 1, viz.: that they omitted to furnish the required security when they had the opportunity of doing so in order to take another contract, that for Section 5. We deal with the question whether on that occasion Waddle & Smith failed in doing what was required of them in our report on contract No. 4, which was given to Oliver, Davidson & Co., for Section 5. We think, however, that their action or omission in that case, did not influence the decision to pass them by in favour of Sifton, Glass & Co., in this case, for the evidence shows that the Secretary of the Department proposed on the 6th of October, 1874, to contract with Messrs. Sifton, Glass & Co., and that on a later day, the 21st of that month, he was corresponding with the Minister of Justice, concerning the nature and amount of the security to be furnished by Messrs. Waddle & Smith in relation to Section 5.

We cannot learn from any of the witnesses that the expediency of awarding this contract to Messrs. Waddle & Smith, together with the adjoining section from Red River to Thunder Bay, was taken up for consideration. None of the officials state that this feature was discussed, and it seems to have been taken for granted that because Mr. Fleming had advised against giving them two sections, one from Lake Superior to Red River, and the other from Edmonton to the telegraph system of British Columbia, therefore they ought not to have two sections, though having practically a common terminus at Winnipeg.

Tenders had been invited for the construction of the whole line under one contract, and that course was not adopted, apparently on the ground that it would be built at less expense with separate agreements. Mr. Fleming's report of 12th August, concerning the comparative cost of building the line

on one tender or on several, reads: "It is clear from the above that if the work can be completed for the lowest tenders, it would be best to let the contract by sections." There is no evidence of a Departmental decision, that under no circumstances should adjoining works be carried on by a single management; but in this case it seems to have been assumed that there had previously been such a decision.

Whether at the time of discarding Messrs. Waddle & Smith's tender, the expectation that the whole distance from Fort Pelly to Thunder Bay, Sections 1 and 5, would, under two contracts, be built with more speed and efficiency than under one, and so compensate for the higher cost which was finally promised, may be open to argument. There were no reports on that question, and, as before mentioned, apparently no discussion. We are not able to offer any decided opinion on it.

In reaching the terms finally conceded to Messrs. Sifton, Glass & Co., none more favourable were passed by—except those offered by Messrs. Waddle & Smith. The latter firm being disposed of as just mentioned, the Department, on 6th October, 1874, communicated through its Secretary to Messrs. Sifton, Glass & Co., asking if they were ready to contract for Section 1.

The day before that Mr. Fleming had reported specially on the state of affairs in relation to this section, as follows:—

" OTTAWA, 5th October, 1874.

" F. BRAUN, Esq.,

"Secretary Public Works.

" SIR,—Referring to my letter of September 16th, respecting the tender for the Pacific Railway Telegraph, and the subsequent award of Section No. 1 to the parties represented by H. P. Dwight, it appears that these parties (who have recently been here) now decline to execute the contract on the ground that they did not embrace the clearing required in the wooded portion in their calculations, and they would be required to be paid extra for clearing at the rate of \$320 per mile.

" On reference to the comparative statement prepared when the tenders were opened, embraced in my letter to you, dated August 10th, I find that the assumed length of woodland, adopted at the time for calculation, was 200 miles in this Section (No. 1.)

" Assuming that these parties were permitted to amend their tender by adding the clearing at \$320 per mile, or say \$64,000, added to their original sum, \$56,250, would make a total sum of \$120,250.

" The three next lowest tenders are as follows:—

		"Construction.	Maintenance.
"Tender Letter O.—	Waddle & Smith,	\$106,250	\$3,000 per annum with profits.
"	" A 1.—Sifton, Glass & Co.,	107,850	Included.
"	" I.—Mackenzie, Grier & Co.,	115,750	\$70,000 for whole line.

"As Tender A 1. appears to include the maintenance of the telegraph in the price for construction, it is really the lowest of the three.

"The prices given in Tender A 1 for the section between Fort Garry and Fort Pelly are as follows :—

"Through woodland, \$492 per mile ; through prairie, \$189 per mile.

"This tender states that these prices are intended to include clearing through woodland to a width of 132 feet (as for cropping), pack trail, station houses, all material required, instruments and appliances of the best description.

"I am, &c., &c.,

"SANDFORD FLEMING."

It will be noticed that this report of Mr. Fleming is based upon a construction of the tender of Messrs. Sifton, Glass & Co., which would exclude any separate price to them for maintenance.

On the 7th October, Sifton, Glass & Co. telegraphed the Secretary that they would enter into the contract, and after an exchange of views in a correspondence upon securities, Mr. Glass came to Ottawa to represent his firm in the arrangement for closing the contract. While in Ottawa, he made it apparent to the Department that the tender of Sifton, Glass & Co. had been misconstrued, when Mr. Fleming undertook to give its meaning in his report of 10th August, before alluded to, and also in his report of 5th October, above set out.

Mr. Glass appears to have pointed out that the allusion in their tender to their estimate concerning the country from Fort Garry, eastward and westward (to Winnipeg River, and Fort Pelly, respectively), was not intended to name prices for the construction and maintenance of Section 1.

Whether this assertion awakened any doubt in the minds of the officials as to the propriety of having assumed their tender to be a complete and distinct offer for Section 1, is not to be ascertained from the evidence.

In the tenders for the construction of the telegraph line the Government had departed from the usual custom of requiring offers to be made on prescribed forms.

The memorandum for the information of parties proposing to tender opens as follows :—

"It is deemed best to make no binding stipulations as to the form of proposal so that parties tendering may be at liberty to state their own terms and conditions."

Some tenders stated prices for maintenance without reference to operating the line or the profits from it, some for maintenance and operating

without profits, some for maintenance coupled with both operating and profits.

In this case the tender of Messrs. Waddle & Smith had been in the alternative. They had offered to keep the line, or *any part of it*, in good running order at \$24 per mile per annum, without profits, or \$12 per mile per annum with profits. This was equivalent to a bid of \$15,000 for the profits to be made over and above working expenses on Section 1 for five years.

The tender of Messrs. Sifton, Glass & Co, stated by implication a price for maintenance of whole line, but made no allusion to profits. Before Mr. Glass visited Ottawa, in October, 1874, his firm had not coupled the item of profits with their offer; after his arrival he discussed the meaning of his tender in a conversation with the Chief Engineer, after which the following correspondence ensued:—

“ OTTAWA, 14th October, 1874.

“ TO SIFTON, GLASS & CO.

GENTLEMEN,—The draft of contract for the Telegraph between Forts Garry and Pelly having been referred to me, and having been under the impression that the prices named in your tender, viz.: for woodland, \$492 per mile; for prairie, \$189 per mile, covered the cost of maintenance for a period of five years; you, however, having asserted that these prices do not include maintenance, I would wish you to explain in writing the exact meaning of your tender and state the prices which you hold should be mentioned in the proposed contract.

“ Yours very truly,

“ SANDFORD FLEMING.”

“ OTTAWA, 14th February, 1874.

“ SANDFORD FLEMING, Esq.

“ DEAR SIR—In reply to your letter of this morning, we beg to say that according to our tender of the 22nd July last for the construction of the Canadian Pacific Railway Telegraph, or any section thereof, the average price per mile for wood land was to be \$629 per mile, and for prairie \$259 per mile. We estimated that there would be 1,485 miles of wood land, which at \$629 per mile would come to \$934,065, and that there would be 705 miles of prairie, which at \$259 per mile would be \$182,595; in all, \$1,116,660. Our whole tender for the whole work was \$1,290,000. The difference between the two sums, viz., \$173,340, being our tender for maintaining and working the whole line for five years, any portion of the work now awarded to us should be based upon this calculation which we estimate at say \$16 per mile per annum. Contractors are to maintain work and receive the profits of the line.

“ Yours very sincerely,

“ SIFTON, GLASS & CO.”

This letter did not purport to be a new proposition or negotiation for terms different from those proposed by Messrs. Sifton, Glass & Co., when

in competition with others in the previous July. This firm had been asked "to explain in writing the exact meaning" of their tender, and the above letter was the formal answer. It opens with a suggestion which was not according to the fact. It refers to the tender of 22nd July as having been made for the whole line, "or any section thereof." We think no ingenuity could give it such an interpretation. It closes with an explanation of the meaning of that tender which is entirely without foundation, for throughout that document there is no mention of working the line or any part of it for the profits. The rest of the letter is taken up with showing the gross amount which they had asked for maintaining the whole line—namely, from Lac la Hache in British Columbia to Lake Nipissing or Ottawa, over the country north of Lake Superior. That gross sum gave an average of \$15.83 on their assumed mileage, and the proposition was that that amount should be a basis for allowing them \$16 per mile per annum for maintenance on any portion of the line to be awarded to them—they then knowing from the notification by the Secretary of the 6th October, 1874, that Section No. 1 had been awarded, and then also knowing that section to be the least expensive of all the sections to maintain. All the terms suggested by this letter were acceded to immediately, and as far as we can learn without any report or serious consideration as to their reasonableness.

This correspondence was followed on the same day by a report from Mr. Fleming, erroneously, as he says, dated the day before, in these words :

"OTTAWA, 13th October, 1874.

"F. BRAUN, Esq.,

"Secretary, Public Works.

"SIR,—With regard to the contract for the Pacific Telegraph Line between Fort Garry and Fort Pelly, Messrs. Sifton, Glass & Co. claim that an allowance for maintenance of \$16 per mile per annum should be inserted in the contract, and that if they are required to maintain the line they should also operate it and receive any profits that may arise.

"When I reported on the 5th inst I was under the impression that the price, viz. : \$492, through woodland, and \$189 through prairie, mentioned in their tender, included the maintenance of the telegraph for five years, but in this it seems I was mistaken.

"I have asked Sifton, Glass & Co. to make their own explanations and state the price which they hold should be placed in the contract. I enclose a copy of their letter of this date giving the required explanation.

"It appears that in their tender for the whole line, the length of which they placed at 2,190 miles, there was an allowance for maintenance of \$173,340, or at the rate of very nearly \$16 per mile per annum, and at this rate they are prepared to maintain, operate and receive the profits of the section now awarded to them.

"The allowance for maintenance claimed by Sifton, Glass & Co. does not materially affect the relative positions of the three lowest tenders, as will be seen from the following :—

Con. Main.

"Tender Letter O, Waddle & Smith... \$106,300 \$3,000 per annum profits.

"A 1, Sifton, Glass & Co.. 107,850 4,000

"I, Mackenzie, Grier & Co. 115,750 8,000

"It has already been determined not to award two sections to Messrs. Waddle & Smith, leaving the tender of Sifton, Glass & Co, as now explained, still the lowest.

"I am, &c., &c.,

"SANDFORD FLEMING."

As before mentioned the letter of Messrs. Sifton, Glass & Co., of 14th, October, pointed out a means by which their tender may be so analyzed as to show a price asked for the maintenance of the whole line, namely, \$173,340. This was the result of deducting from their gross price, for the construction and maintenance of the whole line, the price which by a calculation could be seen as their price for the construction alone, and they proposed that this difference of \$173,340 should be taken as a basis for allowing them a price per mile for maintenance of Section 1 alone, equal to the average per mile of the price they had so proposed for the whole line, and which was really \$15.83 per mile. The difference between this \$15.83 and \$16 per mile is not material. But we learn from the evidence before us of Mr. Sifton, the active member of this firm, that mileage would not give any proper idea of the comparative cost of maintaining the different portions of the line.

This witness said that before tendering, his firm had discussed very fully the maintenance of the line on the different sections, that they considered some portions of the line would be more expensive to maintain than others, the most expensive would be between Lake Nipissing and Nipigon, the next between Thunder Bay and Red River, the next in British Columbia, the next between Edmonton and Pelly, and the least expensive of all this Section No. 1, which would, in the opinion of Mr. Sifton, be from 15 to 25 per cent. cheaper than the next cheapest distance, that is, from Pelly to Edmonton. The reports of Mr. Fleming, 1872 and 1874, indicate the very rough character of the sections, which are thus described as requiring the greatest outlay in maintenance, and we think it ought to have been apparent that this, the easiest section, did not call for a price equal to the average which had been impliedly asked for the whole line. The other condition, the profits to be derived from working the line, made its first appearance in the letter of Messrs. Sifton, Glass & Co., above set out.

We cannot learn why these terms were granted, as of course. Mr. Fleming has stated that his memory is not a retentive one, and he has not been able to describe the substance of any conversations concerning this matter. His evidence was in effect that some years ago Mr. Glass had been in his office frequently. He believed that Mr. Glass and Mr. Fleming, another of the firm of Sifton, Glass & Co. were in Ottawa in October, 1874, but was not sure. He found it impossible to state the substance of any conversation between Mr. Glass and Mr. Fleming and himself before the contract was finally decided upon ; but he said he had no doubt Mr. Glass pressed his own views very strongly, and that he combatted them as well as he could, as far as they were inconsistent with what he thought was the meaning of their tender. We understood him to mean that this pressure and this combatting were matters of surmise, not of recollection.

The proper measure of this demand for profits (meaning of course the profits left after payment of working expenses) is not to be gathered from the subsequent events, because these have not been what were then to be anticipated.

We describe hereafter the character of the construction and maintenance of the line over this section, more circumstantially than is here necessary. But in connection with our present subject it is pertinent to say that the line was not well constructed, and has been insufficiently maintained, facts which necessarily lessen the number of messages over it and the consequent receipts. Mr. Sifton, in his evidence, gives \$1,300 as the probable net gain by operating the line for the whole period. At the time, however, of conceding this item to his firm, it was understood that the railway would be constructed on the same general route as the telegraph. "Profits," therefore, meant at that time, not those which could be earned over a line ill maintained through a country distant from railway works, but those derivable from a line properly constructed and fully maintained, along the route on which the railway construction would take place. The route on which the telegraph was built has for railway location been since abandoned, and another south of Lake Manitoba has been established in its stead. The condition that Messrs. Sifton, Glass & Co. should operate and take the profits of the line, was not qualified by any terms discriminating in favour of Government messages. No tariff of charges for any of the business was established or arranged for.

As before mentioned, the amount which, in October, 1874, would have been a reasonable estimate of the advantage to be gained by a contractor in

receiving the profits of the line, does not seem to have occupied the attention of the Department. There is no record or other evidence of any official opinion on the subject.

The evidence shows that on 14th October, 1874, the day on which Mr. Glass interprets his firm's tender, their whole demand was, by the Department, directed to be embodied in the contract.

A memorandum concerning this contract is produced in the writing of Mr. Fissiault, the law clerk of the Department, dated 14th October, 1874, mentioning that an Order in Council would be required, because the lower tender of Waddle & Smith had been passed over. The contract was made without such authority. In giving evidence, Mr. Mackenzie and Mr. Trudeau stated that as they understood the rules of practice on this subject, an Order in Council was not required. The following is the language of part of section 21 of the "Act respecting the Public Works of Canada," passed in 1867: "In all cases where it seems to the Minister not to be expedient to let such work to the lowest bidder, it shall be his duty to report the same, and obtain the authority of the Governor, previous to passing by such lowest tender."

We conclude that in this contract, and in addition to any advantage in being ranked as competitors for Section 1, the contractors got that to which they were not entitled under the tender made by them in competition with others, inasmuch as they obtained:—

(1) A higher price for maintenance than a fair construction of their tender would give.

(2) The profits of operating the line.

The evidence does not disclose the reason for conceding these advantages, although the gentlemen then acting respectively as Minister, Deputy Minister and Chief Engineer, as well as others, have been examined touching the subject.

Several witnesses have been questioned upon the manner in which this contract has been executed. The tenor of their evidence is to show that a mistake was made in placing too much reliance upon the fact that the contractors had to maintain the line for five years, after its completion; this has not proved a sufficient inducement to make them erect a good line in the first instance.

Mr. Rowan was the District Engineer at Winnipeg during the construction of the telegraph line and had considered this question. His opinion was that a Government Inspector ought to have been appointed to see that the work was efficiently done in the first place; he had recommended that course, but it was not adopted. In his view, the operating and maintaining the line would have been better in the hands of the Government, than of the contractors, because it would have been so managed as to be of more use than it had been to the Government and to the public generally. He testified that the poles had not been properly set in the first place, that it had not been properly maintained, and that communication had been frequently interrupted.

A return to the House of Commons, dated 8th March, 1880, (not printed) shows that Col. French, Commissioner North-West Mounted Police, on the 7th June, 1876, communicated to the Department of Public Works that the line east of Swan River Barracks had not been working for a month, and that he had previously pointed out, "how little zeal or energy had been shown by the contractors" on that section of the line, and that between that place and the Narrows of Lake Manitoba, a distance of 175 miles, there were no persons to repair the line. On the 25th June, 1877, Mr. Marcus Smith pointed out to the Department that the contractors were putting a too liberal construction on the 13th clause of the specifications, which did not require the telegraph line "in the first place to be so permanently constructed as could be desired;" that in the muskegs or swampy ground the poles were not well set or stayed, and on the 16th March following he reported that the maintenance of the line had not been fully carried out. Some of the witnesses examined by us on this subject had taken part in the construction and in the maintenance of the line; others had a knowledge of the office business, the working and the interruptions. The evidence shows that in the winter of 1875-6, a good deal of the line had been carried over muskegs by cutting holes in the ice and putting the poles into them without inserting them into the material at the bottom, which was described as slush—the ice alone holding the poles temporarily in their places. A considerable portion of the country over which the line was constructed is wet and swampy, furnishing very insufficient foothold for the poles except at a great depth from the surface. This surface is often water, and during the construction the character of the country induced the contractors, to erect the poles in such a way that it was impossible for them to remain long in their places.

One witness testified that he alone did the repairs for 165 miles, and that the work was, consequently, not substantial, and the line was not maintained sufficiently to enable it to be worked without unreasonable interruptions. The line was frequently down and communication stopped. These interruptions occurred less frequently in the winter than in the summer season, for the reason that ice is an insulator, and the wire passing through it would not stop communication, while in water the circuit is broken. As a rule the working was continued during the winter, but for less than three-fourths of the summer season. In the summer of 1878 it was better maintained than usual; in other summers, breaks occurred frequently and lasted for weeks.

Almost all the poles were of poplar, which is a short lived wood, lasting about three years, and in the repairing of this line after it was constructed, old poles which had rotted at the ground, were broken off and used again. The contract was, in substance, that the construction of the line should be agreeable to the true intent and meaning of the advertisement and the memorandum hereinbefore set out, which were attached as specifications to the contract. The contractors for telegraph construction on this railway have generally contended, that Section 13 of the memorandum shows the true intent and meaning of the bargain to be, that it was not necessary to construct a line more permanent than would last till the railway should be built, and that then it would be reconstructed. The specifications are, as, under the limited knowledge of the country then possessed by the Department, they must have been, very indefinite, and whether the contractor has fulfilled his promise concerning the construction, may depend upon the legal effect of the language of the memorandum A, and the contract together. We do not venture an opinion upon that matter. We feel satisfied from the evidence, as a whole, that the line constructed was of a very temporary character.

The contractors undertaking to maintain the line in good "running order" for a period of five years from its completion was unqualified. We have to report that this had not been done for the period which elapsed before the date of our commission.

The line under this contract was carried from Fort Garry along the west side of the Red River to Selkirk, and thence to Livingstone. The line ended under Contract 14, at the east side of Red River.

The break thus left at the crossing of the river was supplied by a line constructed under a contract between Mr. Rowan, on the part of the Government, and Mr. Sifton, of Sifton, Glass & Co. Mr. Rowan reported to the Department on the transaction, and it was carried out at a price of \$600—half for construction and half for maintenance.

Up to 30th June, 1880, the amount paid on the main contract was as follows :

30th June, 1875.....	\$18,250
“ 1876.....	50,200
“ 1877.....	31,850
“ 1878.....	2,000
<hr/>	
Construction.....	\$101,800
Maintenance.....	17,285
<hr/>	
Total.....	\$119,085

CONTRACT No. 2.

Telegraph Line.

By this contract, dated 30th October, 1874, Richard Fuller undertook to construct the telegraph line, on that portion of Section 3 between Fort Pelly and a certain point in the longitude of Edmonton, about 550 miles in length, agreeably to the true intent and meaning of the specification or memorandum annexed to the contract, and as more fully described in the said contract, and also to maintain the line in good running order for a period of five years from the date of completion, receiving for the construction \$117,250, equal to \$213.18 per mile, and for the maintenance \$13,000 per annum.

As explained in our report on Contract No. 1, no separate competition was invited for the distance covered by this Contract No. 2.

At the opening of the tenders on the 7th August, 1874, as hereinbefore described, Mr. Fuller was, according to the schedule prepared by Mr. Trudeau, Mr. Braun and Mr. Fleming, adjudged to be the lowest tenderer for the whole of Section 3.

Besides this general schedule, Mr. Fleming made a report, dated 10th August, 1875, to which was appended a separate sheet for each section. He

sets out his view of the effect of each of the thirteen tenders for Section 3 (See page 15, Blue Book Return, Commons, 1st April, 1876.) In the body of his report he gives the following as a summary of the six lowest :—

Tender.	Construction.	Maintenance per Annum.	Time for Completion.
	\$	\$	
R. Fuller.....	156,000	19,000	1st November, 1875.
McKenzie, Grier & Co.....	202,900	70,000 (and profits.)	1st September, 1876.
M. W. Thompson.....	224,000	11,200	3 years.
Waddle & Smith.....	229,000	9,600	500 miles per year.
Wm. Josleyn.....	280,000 (offices not included)	Included.	3 years.
Humphrey & Co.....	410,000	100,000 (whole line.)	4 years.

On the 15th August, 1874, the Deputy Minister of the Department telegraphed to Mr. Fuller that his tender was accepted, subject to conditions then mentioned concerning security. On the 18th of the same month the following telegraphic message reached the Department :—

"I accept conditions mentioned in your telegram yesterday. Before proceeding to Ottawa, please to inform me if I am to run line to Fort Pelly by way of Fort Ellice, that I may secure poles and have them planted forthwith.

"R. FULLER."

The mention of Fort Ellice in this telegram is the first allusion to a difficulty which was afterwards made more apparent, and finally prevented the Government from taking advantage of this, the lowest tender for Section 3.

Neither the advertisement for tenders for this work, nor the memorandum of information which followed it, indicated the location which was afterwards adopted or gave data from which one could learn approximately the proportion of woodland or prairie to be crossed on Section 3. The memorandum of information contained the following :—

(Sec. 4.) "When the route is adopted by the Government on any particular section, the line to be followed by the telegraph will be defined on the ground by the Government officers."

(Sec. 16.) "Between Fort Garry and Fort Pelly the country is partly wooded and partly prairie, the exact proportions are not yet known."

(Sec. 17.) "Between Fort Pelly and Edmonton the country is prairie."

The map published with Mr. Fleming's report of 1872, showed the then projected location of the railway to be south of Lake Manitoba, and through a country almost entirely prairie. Mr. Fuller, apparently, relying on what he considered to be authentic information, assumed that the location would be on the southerly route near the Riding Mountains, and made his tender at the gross sum of \$156,000, equal to \$195 per mile, without any distinction in price between woodland and prairie.

It does not appear from the evidence that Mr. Fuller was informed, in answer to his telegram, whether the line of Section 3 would be by way of Fort Ellice. At all events, after some further correspondence between him and the Department concerning securities, he proceeded to Ottawa on business connected with this matter, and while there objected to entering into a contract on the terms of his tender, demanding an additional price of \$20 per acre for the clearing, which would be required through the woodland, upon the northerly route by way of the Narrows of Lake Manitoba.

The substance of the amended offer, and the bearing of it upon the position of the Government in regard to Section 3, will be found in the following letter of Mr. Fuller and the report of the same date by Mr. Fleming:—

"OTTAWA, 16th September, 1874.

"SIR,—Referring to my letter of the 14th instant, and your intimation to me that the Government, in justice to other contractors and the public interest, cannot agree to my altered terms with respect to Section No. 1 on account of the clearing,

"I have no objection to carry out the work on the balance of No. 3 for the sum left by deducting the amount of Section No. 1 from the amount of Section No. 3.

"I have the honour to be, Sir,

"Your obedient servant,

"R. FULLER.

"SANDFORD FLEMING, Esq.,

"Chief Engineer, &c., Ottawa."

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 16th September, 1874.

"SIR,—With the view of arranging some of the terms of contract with Mr. R. Fuller, to whom was awarded the construction of that portion of the Pacific Telegraph line, between Forts Garry and Edmonton, I met him, at my office, on the 14th instant.

Mr. Fuller stated that his tender for that portion of the line between Fort Garry and Fort Pelly (section No. 1) was based on carrying the line south of Riding Mountain, and almost entirely through a prairie country; that if it was taken north of the Riding Mountain, he would require to be paid \$20 per acre for all the clearing necessary to be done; this would

have the effect of adding between fifty and sixty thousand dollars to the sum mentioned in his tender.

"As directed by the Minister, I intimated to Mr. Fuller that the altered terms proposed by him could not be entertained by the Government.

"Mr. Fuller writes me this morning, his letter enclosed, stating that though he could not carry out that portion of the work designated section No. 1, he has no objection to carry out the balance of section No. 3, *i.e.*, from Fort Pelly to Fort Edmonton, in accordance with his tender.

Mr. Fuller's tender for the whole of section No. 3 is \$156,000, his tender for section No. 1 (a portion of No. 3) is \$38,750, leaving \$117,250 for the telegraph between Forts Pelly and Edmonton. I find that H. P. Dwight is the next lowest for section No. 1; his tender is \$56,250. This sum added to \$117,250 makes \$173,500 for the whole of section No. 3. I find that the second lowest tender for section No. 3, is Mackenzie, Grier & Co., \$202,900, so that the giving of the work on section No. 1 to Dwight, and the balance of section No. 3 to Fuller, would still keep the cost, \$29,400, under the second lowest tender.

"I am, Sir,

"Your obedient servant,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary of Public Works."

In this report Mr. Fleming does not recommend any action in the altered state of affairs brought about by the new demand of Mr. Fuller; he simply shows that if Mr. Dwight's tender for section 1 should be made available, then the whole of section 3 could be constructed and maintained, part of it by Mr. Dwight, and the balance by Mr. Fuller, at a lower cost than by accepting Mr. Fuller's new offer for the whole. He does not allude to the consequences which would ensue, should Mr. Dwight also refuse to carry out his tender.

The fact that in this report Mr. Fleming presents the cost of section 3, under the new demand of Mr. Fuller, as a matter to be considered on its merits before deciding to decline it, intimates, we think, that in his estimation it was not one which, by the rules of the Department, could, under no circumstances, be entertained. The pecuniary result of this offer is placed in juxtaposition with that of others, so that, by a comparison of such results, the least expensive course may be indicated. The case then presented by Mr. Fleming, made it apparent that for that occasion, Mr. Fuller's new proposition concerning the whole of section 3, ought not to be accepted. This was on the 16th October, 1874. Mr. Dwight declined on the next day to fulfil his offer concerning that portion of section 3 known as section 1; which circumstance presented a new case for the consideration of the Department. The problem was no longer to be solved with Mr. Dwight's

offer as a factor in it. Mr. Fleming, in his above mentioned report, dated 16th September, 1874, upon the effect of Mr. Fuller's new demand, stated that it would add from \$50,000 to \$60,000 to his original tender. The addition of the highest of these sums would raise his demand for the whole of section 3 to \$311,000; but as hereinafter shown, his new demand really increased his offer by \$64,000, making it altogether \$315,000 for construction and maintenance, without profits. The tender next above Mr. Dwight's for the easterly part of section 3, *i.e.*, section 1, was that of Waddle & Smith, which without profits amounted, for construction and maintenance, to \$121,250; this, with the price which Mr. Fuller was still willing to take for the construction and maintenance of the residue of section 3, \$182,250, made a total of \$303,500; and, therefore, if this tender of Waddle & Smith's could be accepted, an opportunity occurred, by which the work on the whole distance of section 3 could be provided for, at \$11,500 less than by accepting Mr. Fuller's amended offer of \$315,000. However, in dealing with section 1, the Department had discarded the tender of Messrs. Waddle & Smith, apparently, for the reasons stated by Mr. Fleming, which are set out and commented upon in our report concerning contract No. 1; and this offer does not seem to have been considered available, when the question for the decision of the Department, as in this instance, related to the method of completing the longer distance covered by section 3. The action of the Department plainly proceeded upon the assumption that Sifton, Glass & Co. were the parties to be dealt with next after Mr. Dwight.

Mr. Fleming's report of 5th October, 1874, stated that the new demand of Mr. Fuller for clearing, increased his tender by a sum of \$64,000.

This last report of Mr. Fleming was not brought to our notice until after the oral testimony before us was concluded. In our examination of witnesses it was assumed that Mr. Fleming's former report of 16th September, 1874, naming \$50,000 to \$60,000 as the probable excess caused by Mr. Fuller's new claim, was correct. This last report of Mr. Fleming shows Mr. Fuller's amended offer to be \$4,000 more than it was so assumed to be, in the first instance.

On the 14th October, 1874, Mr. Fuller's amended offer for the whole of section 3 was as available as when it was discussed in comparison with the effect of Mr. Dwight's tender.

Thus on that day, and assuming that Waddle & Smith were properly excluded from the competition, two methods for the construction and main-

tenance of section 3 were open to the Department—one method by accepting two offers, namely, that of Sifton & Glass for the east part known as section 1, giving them \$127,850 and the profits of the line, and that of Mr. Fuller for the residue of the distance giving him \$182,250 without profits. The other method by accepting Fuller's amended offer for the whole at \$315,000 without profits. It appears that only one of these methods was considered, that in which Messrs. Sifton, Glass & Co. took a part. There is no evidence to show that when Messrs. Sifton, Glass & Co. proposed the new terms for section 1 contained in their letter of the 14th October, 1874, the effect of these new terms on the cost of completing the whole of section 3, was discussed or reported on by any official. Mr. Trudeau, the Deputy Minister, in his evidence, suggests as a reason for excluding Mr. Fuller's amended offer from the competition for section 3 as a whole, the fact that he had there required for clearing through woodland a price beyond that named in his tender, and that by the Departmental practice concerning the letting of contracts on tenders, this fact precluded any dealing with him on the basis of that amended offer. This explanation is not convincing when we see the contract subsequently made with Mr. Fuller for part of section 3, and of Mr. Fleming's report of 16th September, 1874, at which time he submitted the relative advantages of Mr. Fuller's amended offer, and of others including Mr. Dwight's. We are informed by Mr. Trudeau's evidence that no consideration but that of the pecuniary result affected the decision concerning these contracts Nos. 1 and 2. Therefore, on the 14th October, 1874, the propriety of adopting the method afforded by Mr. Fuller's latest offer for the whole of section 3, rather than that which was adopted, namely, by the contract with Sifton, Glass & Co. for part, and with Mr. Fuller for the residue, depended on whether the profits of the line from Fort Garry to Fort Pelly for five years after completion, were at that time to be reasonably estimated at more or less than \$4,900. This feature of the transaction did not apparently occupy the attention of any one in the Department, and it clearly did not so far as to call for any formal report, for there is no record of any official opinion on that subject. All the witnesses who have been questioned concerning it give us the impression that the comparison of the profits with any definite sum was new to them. We have in our report on Contract 1 pointed out the value which one firm of tenderers placed upon these profits on the 22nd July, 1874, viz. : \$15,000. We do not feel justified at this day, in offering any estimate of our own on the prospective profits which ought, in

closing the arrangements, to have been adopted as a basis for the action of the Department.

The evidence of Mr. John W. Sifton, alluded to in our report on Contract No. 1, estimates his net receipts from the working of the line at \$1,300 for the five years. Therefore, though not able to form an opinion upon the profits which in October, 1874, might have been reasonably expected, we have data upon which we can give the actual effect of the course adopted in this instance.

We conclude that the two contracts entered into by the Government for the construction and maintenance of the whole distance of section 3, the said contracts being Nos. 1 and 2, have resulted in the contractors receiving a lower compensation than would have been received by Mr. Fuller had his amended offer for the whole been accepted, and that in obtaining this Contract No. 2 the contractor got no undue advantage.

In this contract the time named for completion of the work was 1st July, 1876. It was completed so far as to be ready for operation on the 15th of that month. In the specifications furnished to tenderers the distance over which this contract extended was described as prairie. After the contract was made it was found that the line passed through some wood land, and Mr. Fuller claimed for clearing through this the compensation of \$30 per acre as an extra. His claim was not allowed in full but a compromise was effected, by which he accepted \$25 per acre for this clearing, and he was paid altogether for that item \$10,200. He also made a claim for delays and losses occasioned by his freighting parties being stopped by Indians. The correspondence on this subject between him and the Department is set out in a return to the House of Commons dated 8th March, 1880, (not printed). These freighting parties had been prevented finishing work for Mr. Fuller, as provided for in the contract with him, and they sued him in a court in Manitoba, recovering judgment against him for their damages. His claim against the Government was for reimbursement. It was not allowed in full, but he received about half the amount that he had expended, and his claim was finally arranged by a payment of \$1,367. When he first took his supplies upon the ground ready to proceed with the construction of the line, it was not located, and he deposited his supplies at a place which turned out to be at some distance from the line as finally adopted. This necessitated a second transportation, and he claimed to be reimbursed for this. His demand was satisfied by payment of a portion.

After the construction of the line, about twenty miles of it was burned down by prairie fires on two occasions. This resulted in interruptions and the Government deducted from the contractor's allowance for maintenance \$960 on this account. This was the most serious omission in the maintenance of the line according to the contract, and on each occasion the line was put into working order as quickly as possible after the fire. The contractor has been allowed to operate the line and take the receipts as his compensation. No tariff having been arranged between him and the Government, he established one to suit himself, at \$1 for ten words or under, and seven cents a word over ten without reference to distance.

At one time he made a proposal to operate the line on specified terms, and the following Order in Council was passed :—

“Copy of a report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 18th March, 1875.

“On a report dated 17th March, 1875, from the Hon. the Minister of Public Works, stating that the only portion of the Canadian Pacific Telegraph line for which arrangements have not been made for operating is that part lying between Fort Pelly and Edmonton, for which Mr. R. Fuller is contractor, and recommending that he be authorized to make arrangements with Mr. Fuller to operate the same on the same terms as the other contractors.

The Committee submit the above recommendation for Your Excellency's approval.

Certified. W. A. HIMSWORTH, C. P. C.

This did not lead to an agreement, and Mr. Fuller has worked the line without any recompense, except that which he has derived from business over it. Working it upon these terms has been a loss to him.

A report from Mr. Fleming, dated 13th January, 1879, states that he had communicated upon the subject with Lieutenant-Governor Laird, who would be well informed on it, and he had found that the line between Livingstone and Battleford had been in pretty regular working condition; that the number of days on which communication had been broken was twelve for the previous year; that between Battleford and the western end, Edmonton, the line had been down for fifty days in the same period. Deduction from the price of maintenance was made on this proportion, upon the said report of Mr. Fleming. In this same report Mr. Fleming stated that Mr. Lucas had inspected the line from end to end, and had found certain defects which it would cost about \$6,000 to remedy. This sum was for the time kept out of moneys going to Mr. Fuller.

We find that the contract has been fulfilled as well as could be expected under the circumstances, and that for such default as there has been,

the Government has kept back from Mr. Fuller out of moneys payable to him, such amounts as were, from time to time, considered to be sufficient to protect the public interest.

Up to the 30th June, 1880, the following sums have been paid on this contract:—

30th June, 1876.....	\$76,950
do 1877.....	21,400
do 1878.....	3,250
do 1880.....	14,000
<hr/>	
Construction	\$ 15,600
Maintenance	21,677
<hr/>	
	\$137,277

CONTRACT NO. 3.

Telegraph Line.

By this contract, dated the 10th of November, 1874, Francis Jones Barnard undertook to construct and finish, according to the specification or memorandum marked "A" attached to the said contract, the line of telegraph along that certain section of the general route of the railway known as section 4, between the existing telegraph office, at Cache Creek in British Columbia, and Fort Edmonton, about 550 miles, and as more fully described in the said contract, and also to maintain the line in good running order, and to operate the same for five years from the date of its completion, the whole to be finished ready for use on the 2nd October, 1876, receiving for the said works \$495 per mile for construction, and for the maintenance and operation without profits \$46.50 per mile per annum; and he further undertook to keep an accurate account of the receipts or messages and pay over the same to Her Majesty. Cache Creek is a point in the valley of the Fraser River, and on the then existing telegraph system in British Columbia.

In the schedule of all the tenders concerning telegraph lines opened on the 7th of August, 1874, by Mr. Trudeau, Mr. Braun and Mr. Fleming, as well as in the subsequent report of the 10th of August by Mr. Fleming alone, the six lowest tenders concerning section 4, the one covered by this

contract, are said to rank in the following order, the lowest being given the first place :—

1. W. R. Macdonald.
2. Waddle & Smith.
3. F. J. Barnard.
4. G. W. Wright.
5. Mackenzie, Grier & Co.
6. Mitchell McDonald & Co.

Mr. Fleming's first report, recommending any action upon the tenders for the telegraph line, is dated the 12th of August, 1874. In that he deals with the expediency of letting the line in separate contracts for separate sections rather than by one contract for the whole, and he also recommends the acceptance of certain tenders for respective sections. Amongst others, he recommends the acceptance of F. J. Barnard's tender for the section covered by the present contract. In that report he gives his reasons for advising the Minister to pass by the tender of W. R. Macdonald, the lowest, as well as of Waddle & Smith, the second lowest. In his view the offer of W. R. Macdonald was so low, and the time within which he would undertake to complete the work so short, that he had grave doubts as to the tender being *bona fide*. He pointed out that the tender of Waddle & Smith did not seem to be a proper one to accept because those gentlemen were the lowest in their offer for section 5, which, if awarded to them, would require all their energies to complete, and as section 5 extends from Fort Garry to Lake Superior, while section 4 is for a great extent beyond the Rocky Mountains, he deemed it not advisable to place both sections in the hands of Waddle & Smith. He reported that Mr. Barnard was well and favourably known in British Columbia, and believed to be possessed of sufficient energy and resources to carry out anything he would undertake, and therefore he had no hesitation in recommending that section 4 be placed in his hands. This recommendation was adopted by the Minister, and directions given to the Engineer in Chief to communicate with the respective parties accordingly. The contract was formally awarded to Mr. Barnard in September, after which it was prepared and sent to British Columbia for signature, and was executed on the 10th of November, 1874. The Order-in-Council prescribed by the Statute relating to public works as a condition precedent to passing over the lowest tenders, was omitted in this case.

The contractor proceeded with his work towards Kamloops on the line indicated as the adopted route for the railway. About five months

after the date of the contract the work under it was stopped by the following telegraphic message:—

“OTTAWA, 9th April, 1875.

“Discontinue building of telegraph line British Columbia under contract with this Department. You will not be called upon to proceed with the work for some months. At what price would, you erect telegraph, say 45 miles, from Quesnel on old telegraph trail, and clearing twenty feet wide.

“F. BRAUN,

“Secretary.

“To F. J. BARNARD,

“Victoria, B.C.”

This discontinuance led to a correspondence between Mr. Barnard and the Department on the subject of damages, which he suffered in consequence of the unexpected stoppage of his works, as well as the steps taken in view of future operations under his contract. We do not deem it necessary to set out this correspondence or the contention of the contractor in regard to the position in which he was placed by this action of the Department, for the reason that it has since been made the subject of a claim against the Government, and has been referred, under an Order in Council, of the 30th of May, 1879, to one of the official arbitrators. The claim was, at the date of our commission, still unsettled and under consideration in the Department of Justice.

Correspondence took place between the contractor and the Department concerning the continuation of work under his contract which, however, led to no understanding, and finally on the 22nd of April, 1879, an Order in Council directed the work undertaken by Mr. Barnard under his contract to be taken out of his hands, under its second clause. This was accordingly done after proper notification to him by the Secretary of the Department. As to letting this contract, we are of the opinion that the recommendation of Mr. Fleming to the effect that the work should be placed in Mr. Barnard's hands, under the circumstances detailed by him in his report of, he 12th of August, was a proper one in the public interest, and that at that time there was no more economical method of accomplishing the proposed work within the reach of the Department. Mr. Fleming, in his evidence before us, states that Mr. Barnard had done some work between Cache Creek and Kamloops before he was stopped by the order from the Department. This distance is about fifty miles, and he also states that the line which was in the year following directed to be built by Mr. Barnard under his contract, was not upon the line originally contemplated, at the time the contract was

entered into ; that it was between Tête Jaune Cache and Fort George, on another route altogether ; that the starting point of that line was a long way —about 200 miles distant from the nearest work which he had done when he was stopped, and that this direction was not within the original terms of the contract. We therefore arrive at the conclusion that up to the 9th of April, 1875, Mr. Barnard was following the terms of his contract, and that the direction given to him in the year following, was not according to the original understanding of the parties to the contract. We have avoided enquiry into the particulars or the validity of his claim against the Government.

Up to the date of our commission the following sums had been paid on account of this contract :—

30th June, 1875.....	\$ 8,000 00
“ “ 1876.....	10,284 91
“ “ 1877.....	8,900 00
“ “ 1878.....	7,015 09
“ “ 1879.....	7,700 00
<hr/>	
Total.....	<u>\$41,900 00</u>

CONTRACT No. 4.

Telegraph Line.

By this contract, dated 9th February, 1875, Adam Oliver, Joseph Davidson and Peter Johnson Brown, undertook to construct a Telegraph line between Prince Arthur's Landing and Red River (about 420 miles), according to the specifications or advertisement and memorandum attached to the contract, and as more fully described in the said contract, and also to maintain the line in good running order for a period of five years from its completion, receiving therefor per mile, \$590 for woodland, and \$435 for prairie.

Mr. Thomas Wells, a Barrister of Ingersoll, was a silent partner in this firm, known as Oliver, Davidson & Co.

The schedule of the tenders made as hereinbefore mentioned on 7th August, 1874, by Mr. Trudeau, the Deputy Minister, Mr. Braun, the Secretary, and Mr. Fleming, the Chief Engineer, as well as the report upon them

made by Mr. Fleming on the 10th of that month, stated correctly that the six lowest were as follows :—

Tender.	Construction.	Maintenance per Annum.	Time for completion.
	\$	\$	
Waddle & Smith, Kingston.....	189,120	\$5,040 and profits	500 miles per year. or more.
Sutton & Thirtkell, Lindsay.....	214,950	Included in construction.	2 years.
Sutton, Thompson & Co., Brantford.....	243,153	.....	.....
Sifton, Glass & Fleming, Ottawa.....	253,080	Included in construction.	July, 1876.
Mackenzie, Grier & Co., Toronto.....	\$288,870 and profits	70,000	1st Sept., 1876.
R. Fuller, Winnipeg.....	315,000	22,500	14 months.

Messrs. Waddle & Smith having been offered the contract, a correspondence took place between them and the Government concerning the securities to be given before the contract was entered into.

This correspondence shows that they offered as such security a mortgage on real estate, which was executed by one Mrs. Sellick as a surety, but which before being accepted as sufficient was withdrawn by her; after the withdrawal, the Deputy Minister of Justices, in a letter dated 6th November, 1874, asked to be informed by the Minister of Public Works whether or not further time was to be given to the tenderers to complete their securities.

Mr. Braun in a letter dated 4th November, 1874, to the Minister of Justice requested that all proceedings had with Messrs. Waddle & Smith should be cancelled, and stated that "the Minister would proceed to the consideration of tenders put in by other parties."

We have not been able to discover any correspondence or notice connected with security by this firm beyond what is printed in the Blue-Book return to the Senate, dated 14th March, 1878, and which does not show that either before or after Messrs. Waddle & Smith took steps towards furnishing securities, there was any notification to them of a definite period within which it will be necessary to complete their security.

Mr. Waddle, one of the firm, was a witness before us, and then stated that he never had the impression that time was a material element in the arrangement, but, on the contrary, that from what had been said by the departmental officials on the subject, he was led to understand that there

was no desire on the part of the Government to have the contract executed until after the end of that year. His evidence also proves, that he had negotiated and arranged at the beginning of December for finding other security to fulfil the requirements of the Government demand. That he went to Ottawa about 7th December to conclude arrangements connected with the contract which he then expected to get, and he there learned for the first time, that the Government was no longer willing to deal with him. He further said that he had on that occasion conversed with Mr. Mackenzie, the Minister of Public Works, and had set up the contention that he had not been notified to give security within a stated time, and was then promised by Mr. Mackenzie that if the parties then negotiating with the Department for the contract failed to give the requisite security, he (Waddle) should have the next opportunity of getting it.

As a fact this was about seventeen days after the Department had offered the contract to Sutton & Thirkell, higher tenderers, and negotiations were then pending for an extension of the time within which they might furnish security.

In corroboration of Mr. Waddle's assertion concerning the willingness of the Government to defer making the contract, there is a letter from the Engineer-in-Chief to the present contractors, Oliver, Davidson & Co., dated 29th December, 1874, before that firm had offered any security, informing them that the matter could be closed at any time convenient to them to go to Ottawa.

Mr. Mackenzie, when before us as a witness, was informed of Mr. Waddle's assertion that a higher tender was taken up without his firm having been informed that their opportunity would end at any specified day. He did not remember that there had been any such contention, and did not believe that there was any foundation for it, mentioning Mr. Trudeau's carefulness in such matters, apparently as a reason for his belief.

Mr. Trudeau was recalled after this evidence from Mr. Mackenzie, and testified that he could find no correspondence beyond that which was published, and had no reason to believe that there was any. This fails to show any notification to Waddle & Smith, or to any one on their behalf, to the effect that they would lose their position unless security should be provided by them in a specified time.

The evidence leads us to say that in this case after the tender of Waddle & Smith, which was understood to be the lowest, was accepted by

the Department, it was passed over in favour of Sutton & Thirtkell upon the ground that Messrs. Waddle & Smith had failed to furnish the requisite security, the fact being that the last named firm had never been notified of any day, before which they were required to complete their security.

On the 20th of November, 1874, the Secretary of the Department telegraphed to Messrs. Sutton & Thirtkell, at Lindsay, from which place their tender was dated, asking whether they were still prepared to execute the works for the price named in their tender and to furnish the necessary security.

This firm was composed of R. T. Sutton, of Brantford, and W. J. Thirtkell, of Lindsay, upon the understanding between them that the latter should have no real interest, but should allow his name to be used solely for Sutton's purposes. Thirtkell had left Lindsay before the 20th November, 1874, and was then living in the United States. On the 24th November, 1874, the Secretary received a telegram, "Yes," from R. T. Sutton. After this, several communications, some by telegraph and some by letter, passed between the Department on the one part and Sutton or his solicitor on the other part, by which the time for putting in the necessary security was extended until the 19th December, 1874. All but one of these communications are printed at pages 6 and 7 of the Blue-Book return to the Senate, dated 14th March, 1878, and will show the steps in this negotiation up to 16th December, 1874, when an extension of three days was asked on behalf of Messrs. Sutton & Thirtkell. That one, a material link in the story, is produced from the records of the Department. It is as follows:—

"By Telegraph.

"OTTAWA, December 16, 1874

"R. T. SUTTON, Brantford.

"Minister grants three days' delay asked for.

"F. BRAUN,

"Secretary."

Mr. Sutton, the proprietor of the rights acquired under the tender of Sutton & Thirtkell and the extension thus granted, not being able to find the required security, proceeded forthwith to negotiate with other parties in order to secure some of the profits which seemed within his reach, and he succeeded in completing an arrangement with Oliver, Davidson & Co., the present contractors, by which they were within the given time to do all that was necessary in order to secure the contract on the accepted ten-

der, and they agreed to fulfil it, taking for their own use three-fourths of the profits, and paying over the balance to Mr. Sutton.

There is conflicting evidence upon the question whether Mr. Sutton's first approach was made to Mr. Oliver and Mr. Brown at Ingersoll, or to Mr. Davidson at Toronto, where Mr. Sutton saw him and Mr. Oliver together.

However this may be, it is clear that very soon after getting the telegram extending until the 19th December, 1874, the time within which security should be given in support of the Sutton & Thirkell tender, Sutton went to Toronto and saw there Mr. Oliver and Mr. Davidson, two of the present contractors; upon which occasion an arrangement to the effect above mentioned was closed; but not reduced to writing. The time left within which the security was to be provided was then so short, that, on the evening of that same day, Mr. Oliver, Mr. Davidson and Mr. Sutton took the the train for Ottawa, and arrived there before the extension of time granted to Sutton & Thirkell had expired. On the 19th December, 1874, Messrs. Sutton, Oliver & Davidson were in Ottawa, and Messrs. Oliver & Davidson then went together to the Department of Public Works; while there they saw Mr. Fleming and conversed with him on the subject. They remained in Ottawa but one day, leaving the same night; before leaving, Mr. Oliver, according to the belief of Mr. Davidson, saw the Minister concerning this contract.

The first tender higher than that of Sutton & Thirkell, was that of Sutton & Thompson, the latter firm being composed of the R. T. Sutton aforesaid, and Mr. William Thompson, of Brantford, upon an understanding between them, as Mr. Sutton says, that Thompson was not to be a full partner, but was lending his name to strengthen the firm, and that Sutton should pay him for so doing

The contract finally entered into with the Government is at the price named in the higher one of these tenders, higher by \$28,200. We have endeavoured to learn what prevented the Department from closing with these parties on the basis of the Sutton & Thirkell tender, and how it was that Messrs. Oliver, Davidson & Co., procured an arrangement much more advantageous to them than that which they came to Ottawa to make.

We have met with much difficulty in the attempt to ascertain what actually took place on this occasion between any one on behalf of these gentlemen, and those who acted on the part of the Government.

Mr. Sutton, as a witness, says he did not himself converse with any one at the Department, it having been understood that Mr. Oliver and Mr. Davidson would undertake that part of the proceedings. Mr. Oliver, the only one who is said to have communicated personally with the Minister, has been in such bad health since the commencement of our investigation that it was useless to call him.

Mr. Davidson, as a witness, says that he and Mr. Oliver saw Mr. Fleming in his office, and talked together on the subject; but he says he remembers nothing being mentioned about the standing or the prices of different tenders, and that the principal information which he gained from Mr. Fleming was concerning the character of the country to be crossed by the line, and the fact that the "Government always fell back on the lowest tender;" he thought, however, that Mr. Fleming said he would recommend the giving of this contract to his firm.

Mr. P. J. Brown, as a witness, gives his recollection of the negotiations between members of his firm and Sutton, and of other matters, but is manifestly astray concerning some of them. He says that Sutton first approached his firm by meeting him and Oliver with the telegram from Mr. Braun naming three (or five) days within which the security might be furnished; that the time being so short he and Mr. Oliver went to Toronto and purchased for that purpose \$10,000 of Federal Bank stock, and Oliver went on at once to Ottawa and closed the arrangement within the days first named in the telegram; as a fact, these days ended on 19th December, 1874.

There is a letter to Mr. Fleming from this firm dated 5th January, 1875, asking what security will be required by the Government and proposing, to give, as their first choice, their individual bonds; as their next choice, mortgages on their real estate, and stating that they had no municipal debentures.

And another from the same firm to the Minister as late as 9th February, 1875, enclosing an executed duplicate of the contract, and, as the security, a certificate for \$10,000 of Federal Bank stock; in this they say they had intended to deposit municipal debentures but could not agree as to price, and had afterwards procured the bank stock. We do not think this consistent with the view of Mr. Brown, that he and Mr. Oliver purchased the Federal Bank stock, and then Mr. Oliver at Ottawa closed the arrangement within the time (ending 19th December, 1874), given by the telegram to Mr. Sutton.

This correspondence, and the evidence of the other parties, makes it plain to us that Mr Brown's recollection is at fault, and we are consequently led not to rely on his version of this matter where it differs from theirs.

Mr. Brown is not within his own knowledge cognizant of the occurrences at Ottawa, and on this subject we can get no light from his evidence.

Mr. Burpé saw, in Mr. Fleming's office, some of the gentlemen who have been named as visiting Ottawa on this matter, but, not being present in the room, he did not hear what passed between them and Mr. Fleming.

Mr. Fleming, as a witness, has told us that his memory is not good. Messrs. Oliver & Davidson both conversed about this matter with him on the 19th December, and the letter hereinafter mentioned and dated on the 24th of that month came from their firm, but there are no written records of any of the steps in the proceedings, which led up to the decision which forms the substance of Mr. Fleming's answer to them on the 29th, also hereinafter set out, and he fails to give any clue concerning them; he has no recollection on the matter beyond the fact that some of them were in his office more than once, but he cannot say, "whether it was Oliver & Davidson or a gentleman named Brown."

On being reminded by us of the part he had taken in this correspondence—by which Oliver Davidson & Co., had been allowed to get Sutton & Thompson's position, Mr. Fleming said he wished us to understand that from first to last he had nothing to do with making contracts, unless he was specially asked to interfere—that in this case he had probably gone to the Minister, or Deputy Minister, or Mr. Buckingham, to enquire if the thing could be done so that he could answer the letter, but we understood him to state this probability as a surmise.

Mr. Trudeau, as a witness, informed us that dealing with Oliver, Davidson & Co., under the circumstances in which they assumed to have the rights of Sutton and Thompson, that is on the assertion in their letter of 24th December, was not according to the usual practice of the Department—that he cannot give any reason for this being made an exception, and that though he was aware of the irregularity of the case, he did not enquire into it, because the transaction was managed by the Minister.

Mr. Mackenzie being questioned as a witness concerning the letting of this contract, says he does not remember the particulars of the case; that he

does not think he himself ever arranged in regard to contracts, and that he can give no explanation further than what is contained in the records of the Department.

After this we notified Mr. Trudeau of the substance of Mr. Mackenzie's evidence, and asked him to investigate the matter carefully so as to give us, if possible, some account of what took place at the Department at the time this matter was being arranged with Mr. Oliver or Mr. Davidson, or any other person on behalf of that firm. On being recalled as a witness, he said that he had nothing to add to his former evidence, that he did not think he took any part in the matter.

Both Sutton and Davidson testify that the price talked of between them at Toronto was lower than that which they obtained under the contract.

When Sutton and Oliver and Davidson reached Ottawa, there is reason to believe that Sutton himself was ignorant of the fact that there was no intervening tender between that of Sutton & Thirkell and the higher one of Sutton & Thompson; he said he thought he first learnt that fact from Oliver & Davidson.

Davidson testifies that when they left Ottawa they did not know positively that they would get this contract (at the higher price), but he "thought the thing was looking that way."

Sutton says his first arrangement was that Oliver & Davidson were to "go in with him" on the Sutton and Thirkell tender (the lower one), and he thinks it was verbally arranged while they were at Ottawa, between some of them and the Government, that the Sutton & Thirkell tender should be set aside, and the one from Sutton & Thompson taken, because they went back after the arrangement to "get things into shape," and he thinks there was no doubt that the arrangement was accepted by the Government.

In addition to the fourth share of the profits which were promised to Sutton when he first arranged with Oliver & Davidson on the basis of the lower tender, they did in fact, before the contract was obtained on the higher tender, pay him a further sum of \$800, which he said "had to go to Thompson," and that amount, or part of it, was paid to Thompson for an assignment of his interest in the higher tender.

This transaction with Thompson was no part of the original arrangement, and was an unserviceable expenditure unless these parties after reaching Ottawa learnt that it was advisable to get into Thompson's position.

After the date of the visit to Ottawa by Sutton, Oliver & Davidson, the first step recorded in the Department concerning the substitution of the higher tender is the following letter :

"INGERSOLL, 24th December, 1874.

"MY DEAR SIR,—We now arranged to carry out the tender of Sutton, Thompson & Co, of Brantford, for section 5, Canadian Pacific Telegraph. What time would be convenient to have the matter closed with the Department? Could it stand over until after the Ontario elections? Please advise and oblige yours.

"(Signed) OLIVER, DAVIDSON & CO.,

"By A. OLIVER.

"To S. FLEMING,

"Chief Engineer, C. P. R."

This was answered as follows :—

"CANADA PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 29th December, 1874.

"GENTLEMEN,—I have your letter of the 24th inst, with respect to the construction of the telegraph between Lake Superior and Manitoba.

"This matter can be closed at any time convenient to you to come here.

"Yours truly,

"(Signed) SANDFORD FLEMING.

"OLIVER, DAVIDSON & Co., Ingersoll."

The phraseology of the letter of the 24th December, the word "now" occurring in the original, conveys to our minds the impression that it was intended to inform Mr. Fleming of the accomplishment of what had before then been spoken of between them as an uncertainty—and that what was alluded to was the assignment from Thompson, a matter which became desirable only after their interview on the 19th of December.

After this Mr. Oliver went to Ottawa without any of his partners and secured the contract, which was executed in its present shape on or about the 9th of February, 1875.

Sutton at some time gave a letter to Mr. Oliver to be handed to the Government to the effect that he refused to carry out the Sutton & Thirkell tender, *i. e.*, the lower one. The date of this is not given. No trace of its date or contents is to be got from the Department.

Sutton said he thought there was no document assigning the interest of Sutton & Thompson to Oliver, Davidson & Co. It was left principally to Oliver to arrange with the Government to get the contract.

This much is evident—that on the 19th December the time expired which had been granted to Sutton & Thirkell for furnishing security. The

parties representing that firm were in Ottawa with the intention of carrying it out. They omitted to do so, and yet the omission was followed by no such departmental action as was regular and usual in such cases.

Sutton & Thirkell were not officially discarded, nor was the contract offered to the tender next higher than theirs. The reason for this to be extracted from the evidence is that the higher price would go to a firm which comprised a person, who had not been a party to the bargaining up to that time, and whose rights must be disposed of or acquired before Oliver, Davidson & Co. could be sure of the higher sum. The transaction was apparently kept open that this might be accomplished if possible.

The official records show:—

(1.) No decision to discard the Sutton & Thirkell tender ;

(2.) No reason for such a step ;

(3.) No communication to Sutton & Thompson, or any one on their behalf, that the Government proposed to adopt their tender until after Oliver, Davidson & Co, on 24th December, communicated the fact that they had acquired the position of the higher tenderers ;

(4.) No assignment of the interest of Sutton & Thompson (the higher tenderers) to Oliver, Davidson & Co ;

(5.) No decision that Oliver, Davidson & Co. were entitled to take the standing of Sutton & Thompson.

Owing to the lack of direct evidence found in the statements of the four witnesses who were pecuniarily interested in this contract, and to the bareness of the records of the Department, coupled with the defective memory of its officials, we have to draw our conclusions partially from circumstantial evidence.

We think there is reason to believe that on the 19th December, 1874, Mr. Oliver and Mr. Davidson, under arrangement to that effect with Mr. Sutton, visited the Department of Public Works, intending to take this contract on the tender of Sutton & Thirkell, and to provide the requisite security within the prescribed time ; that while at the Department, they learned that a higher price might be obtained if they could procure the standing of Sutton & Thompson ; that, being uncertain as to the accomplishment of this, they did not forego their position in regard to the lower tender ; but they afterwards secured

an assignment from Thompson which, with Sutton's acquiescence, then gave them the desired status; that no reason for this substitution is recorded or can be ascertained.

The evidence leads us to conclude that in obtaining this contract the contractors got undue advantages.

(1.) Lower eligible tenderers (Waddle & Smith) were passed over without being allowed any specified time for furnishing the requisite security.

(2.) The contractors got a higher price than that at which they were willing to take the contract.

(3.) That the Department had the opportunity of entering into the contract with these same contractors for the same work at a cost \$28,000 less than the amount agreed to be paid to Messrs. Oliver, Davidson & Co.

The evidence does not disclose the reason for paying the higher price.

Towards the completion of the construction under this contract, an arrangement was made by which the contractors were to operate the line.

On the 3^d May, 1876, Mr. Fleming made the following report:—

“ OTTAWA, May 3rd, 1876.

“ F. BRAUN, E^cq.,

Secretary Public Works Department.

“ SIR.— Oliver, Davidson & Co., contractors, for telegraph construction between Lake Superior and Red River, have made an offer to operate the line as it advances from both ends, furnishing offices where no buildings exist, batteries, instruments and operators, for ten dollars (\$10) per mile per annum; all messages on Government business to be free, they receiving in addition to the \$10 per mile, what profits they may earn from outsiders, charging them the same rates as the Montreal and Dominion Telegraph Companies.

“ This proposal, if concurred in, would be a great convenience in connection with the surveys and construction of the railway and as the charge per mile does not seem unreasonable, I would recommend that the offer be accepted.

Yours truly,

(Signed) SANDFORD FLEMING.”

This was followed by an Order-in-Council to the following effect:—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 19th May, 1876.

“ On a memorandum, dated 13th May, 1876, from the Hon. the Minister of Public Works, reporting that Messrs. Oliver, Davidson & Co., contractors for telegraph construction between Lake Superior and Red River, have offered to operate the line as it advances from both ends,

furnishing offices where no buildings exist, batteries, instruments and operators, for \$10 per mile per annum; all messages on Government business to go free,—they receiving what profits they may earn from the public who are to be charged at rates similar to those of the Montreal and Dominion Telegraph Companies.

“That said terms appear to be reasonable, and that the free use of the telegraph line by Government would be of great advantage in connection with surveys and construction of Pacific Railway.

“The Minister, therefore, recommends acceptance of said offer, the contract to be terminable on giving six months’ notice to the contractor at any time and the payment for any part of a year to be at above rate.

“The Committee submit the above recommendation for Your Excellency’s approval.

W. A. HIMSWORTH, *C.P.C.*”

By letter of 10th June, 1876, the offer of Messrs. Oliver, Davidson & Co., was accepted; but the portion of the line between Selkirk and Rat Portage was not handed over to them, because it was being worked by Mr. Rowan, the District Engineer, and his subordinates on behalf of the Government. The western end of the line covered by this contract was well constructed as far as Whitemouth; beyond that the country is difficult and there the line was not so well constructed. In many places the tops of the trees were cut off, and the wires stretched over them. This had the effect of killing the trees, and the roots decaying, caused the supports and the wires to fall together to the ground. Mr. Brown, one of the contractors, testified that in the construction the poles were placed in the middle of the road-bed, particularly on section B; that he asked permission to move them at the expense of the Government, which was not granted, but the contractors for the railway were allowed to do so, and this was done, but not well done, causing trouble. On section 41 he said that the excavation had taken place about the foot of the poles, and that the amount of earth left being insufficient to support them, they were blown down by the wind. The principal portion of the poles on this section was of better wood than on section No. 1. Mr. Rowan, the District Engineer at Winnipeg, said that the maintenance of this line had been very poor, especially that portion of it east of Rat Portage, and that this fact had materially interfered with the business connected with the railway, serious delays having occurred which resulted in loss to the work. He had means of communicating directly from his office over this line, and the manner in which it had been maintained was, therefore, continually within his knowledge. The ordinary habit was that messages would be repeated at Rat Portage, but this was not invariably

the case. He testified that the line was out of order, and not sufficiently maintained for about one-sixth of the year. The following report was made by Mr. Gisborne, of the Telegraph and Signal Service :—

“TELEGRAPH SIGNAL SERVICE.

“CANADIAN PACIFIC RAILWAY,
“OFFICE OF THE ENGINEER IN CHIEF,
“OTTAWA, December 29th, 1879.

“SIR—After a careful perusal of the contract and correspondence relating to Messrs. Oliver, Davidson & Co.'s contract for the construction and maintenance of the Telegraph line between Fort William and Selkirk, and also of their after agreement to operate the same, I have the honour to report :—

“1st. That the insulators, &c., (as per sample placed before me for inspection) were certainly not of the best quality commonly used, as required by contract. 2nd. That the line (as represented to me) has been very badly constructed, and was and is very inefficiently maintained—for example, the wires are reported to have been down,

“19 days during September, 1878.

19 “ “ October, “

14 “ “ November, “

10 “ “ December, “

“Since which dates no returns (so I am informed) have been made to the Department as ordered by Mr. Sanford Fleming. I am also informed by Engineers who have lately traversed the line, that it is in a most deplorable state of repairs.

“It is my opinion, therefore, that the application of Messrs. Oliver, Davidson & Co, their successors and assigns, for a return of the \$10,000 deposit account contract, or of the 10 per cent. drawback, or any portion thereof, or for any payment account operating the line is inadmissible at present, and that no further payment should be made until the line has been inspected and its operation approved by your Superintendent.

“I have the honour to be, Sir,

“Your most obedient servant,

“F. N. GISBORNE,

“Superintendent of Telegraph and Signal Service.

“The Honourable

“The Minister of Railways and Canals.”

We are not able to say whether these contractors have fulfilled their contract according to the legal construction of it. We find that they have not constructed a good line. By their contract they bound themselves to maintain the line in good running order for a period of five years from its completion. Up to the date of our Commission they had not done so. The following sums were paid on this contract up to the 30th June, 1880 :—

30th June, 1875.....	\$ 2,140
“ 1876.....	49,410
“ 1877.....	39,450
“ 1878.....	88,600
“ 1879.....	23,500
“ 1880.....	2,200
	<hr/>
Construction	\$215,300
Maintenance	3,868
	<hr/>
Total.....	<u>\$219,168</u>

CONTRACT No. 5.

Railway Construction.

By this contract, dated 30th August, 1874, Joseph Whitehead undertook to do the necessary excavation and grading on the Pembina Branch at the rate of 22 cents per cubic yard, in the manner specified in the said contract. The work was started hurriedly in consequence of reports made to the Government by people of influence in Manitoba, that numbers of persons were in very distressed circumstances, owing to the grasshopper plague, and Mr. Rowan, the District Engineer at Winnipeg, was ordered to make an examination and to locate a line between Emerson and Winnipeg, on which work could be commenced immediately, following as much as possible one of the road allowances between the two points named. On the 8th of August, 1874, the Government advertised, asking for tenders for the grading of the Pembina Branch between the international boundary and a point opposite the town of Winnipeg. Specifications of the same date were furnished for the use of tenderers. These showed that the work to be undertaken would not be over so great a distance as suggested by the advertisement, and that the work to be actually done was divided into two sections: No. 1, the southern section, passing through townships 2, 3, 4 and 5, about 24 miles; No. 2, the central section, through townships 6, 7, 8 and 9, about 24 miles. The work was the excavation and grading necessary to form a road bed, leaving openings at streams for the subsequent insertion of bridges. The tenders included only one item, which was a price per cubic yard for this work. They were opened on the 26th of August, the

day after that named for their receipt. Twenty-one tenders had been sent in, ranging in their prices from 21 cents to 59 cents per yard. The three lowest were those of :

C. Peach.....at 21 cents.

Joseph Whitehead.....at 22 cents.

A. H. Clark.....at 22 cents.

On the same day, Mr. Peach was requested to see the Minister on the subject of his tender. On the 27th, the day following, Mr. Peach wrote intimating a fear that he could not give the security required, and asking a delay until he could hear from England. On the day following that, the Secretary of the Department informed him that the delay could not be granted. On the 7th of September, 1874, an Order-in-Council authorized the acceptance of Mr. Whitehead's tender, and the contract was entered into on that basis.

At the time that Mr. Peach and Mr. Whitehead were tendering they were boarding in the same house in Toronto. An arrangement was made between them before the contract was awarded to Mr. Whitehead, by which Mr. Peach should go to Manitoba as a foreman for Mr. Whitehead. He did so, and for his services received \$100 a month and board. He afterwards sued Mr. Whitehead in Manitoba, claiming that he was really a partner in the transaction of this contract, but failed in his suit. The evidence before us leads us to conclude that Mr. Peach was a stranger in the country, with but little means ; that Mr. Whitehead's obtaining the contract was not due to any bargain made between them, having for its object the failure of Mr. Peach to find the necessary security. In entering into this contract, Mr. Whitehead was acting entirely in his own interest, not being associated in name or in reality with any other person. At the time this contract was closed the location of the line was not finally decided on, but no delay on that account occurred, as the country to be crossed was easy and the engineers were able to locate in front of the contractor's forces. The specifications and the formal contract based upon them did not include all the work that was afterwards done by Mr. Whitehead, nominally under this bargain. The southern section mentioned in these documents did not include the township in Manitoba next the international boundary, for the reason that the railway connection in Minnesota was not then established, and until that should be done no point of junction could be fixed. Similarly the northern section did not include the route through the township next to St. Boniface, because the precise line could not then be settled on.

The work done by the contractor at the prices named in this contract included portions of these distances so omitted, as aforesaid, from the specifications.

Mr. Whitehead said that he started from the south side of Bishop Tache's estate at St. Boniface, and went as far as the boundary line of the Province.

We conclude that in obtaining this contract, the contractor got no undue advantage, and that at the time of awarding it the Department had no opportunity of securing the same work at a lower price.

A dispute arose between the contractor and the Government respecting the measurement of part of the work, but it was settled to the satisfaction of Mr. Whitehead, though at a sum less than that claimed by him, and the contract was fully completed and paid for.

The expenditure under the contract has been as follows :—

To June 30th, 1875.....	\$18,900 00
“ “ 1876.....	175,965 00
“ “ 1877.....	13,298 00
Total	<u>\$208,163 00</u>

CONTRACT No. 5 A.

Railway Construction.

Though this is numbered as if it pertained to contract 5, it was not entered into until May, 1877, nearly three years after that one. There is no formal agreement concerning the work done under the arrangement which is distinguished in the records of the Department as contract 5 A. Neither was there any understanding, verbal or otherwise, between Mr. Joseph Whitehead, the party who has done the work, and any one on behalf of the Government defining what was to be done. It was undertaken under the following circumstances :—

In May, 1875, an arrangement was made between the Department and the Red River Transportation Company (see contract 18) by which it was provided that a quantity of rails (required for section 14) would be transported from Duluth to Selkirk. This was not accomplished owing, it is said, to the state of the water in Red River at and near the rapids north of

Winnipeg. The Engineer-in-Chief submitted the following memorandum and letter:—

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 19th April, 1877.

"(Memorandum.)

"Under the contract with Sutton, Thompson & Whitehead, the rails have to be furnished them, in order that they may proceed with the track-laying on section 14.

"The rails would, of course, have to be delivered at some point on, or adjacent to the line, say at Selkirk. There are now 918 tons at Selkirk, sufficient to lay about ten miles. It therefore becomes necessary to transport as many as may be required to that point from Winnipeg, where they are now lying.

"The total quantity of rails required to lay the track, covered by the contract of Sutton Thompson & Whitehead, is nearly 11,000 tons.

"I sent a telegram a few days ago to St. Paul, enquiring of the forwarders there at what rate they would carry the rails from Winnipeg to Selkirk. I also telegraphed to the same effect to Winnipeg, and have received replies.

"An offer has come from Mr. Kittson, the Manager of the Red River Transportation Company, offering to carry the rails at the rate of \$2.13 per ton (2,240 lbs.) provided his offer be at once accepted, as the whole work will require to be done within the next five or six weeks, if done at all by water this season.

"The cost of transporting these rails from Winnipeg to Selkirk, including the handling between the river's edge and the edge of the track, would probably be nearly \$3.00 per ton, which would come to over \$30,000.

"Mr. Whitehead offers to do the grading on the extension of the Pembina Branch at the same rate as his original contract, and lay the track at the same rate as the present contract for sections 14 and 15. I have examined the profile of the line, and am of opinion that, for the present, the grade may be reduced in some places about a foot, so as to decrease the number of yards in the embankment to about 8,000 yards per mile, and on this I have based the following estimate:—

Grading 20 miles at 8,000 c. yards; 160,000 c. yards at \$	0.22.....	\$35,200
Ties do do 45,000 do	0.40.....	18,000
Track-laying, 20 miles.....	290.00.....	5,800
Bridging streams		1,000
Total.....		\$60,000

"From this it would appear that the track could be laid on the Pembina Branch at sub-grade for only \$30,000 more than the cost of transporting the rails by water; and I would wish to suggest, for the consideration of the Minister, whether it would not be better to enter into the arrangement with Mr. Whitehead.

"I do not mean that the northern end of the Pembina Branch should remain at what I have called sub-grade, as in that condition it would not be so efficient; but it would answer the purpose of conveying material forward to the trunk line for some years to come, and it must be borne in mind that there will be as much difficulty in getting rolling-stock taken to

Selkirk when it is required by-and-bye, as it is now in getting the rails down, unless the branch be extended as now suggested.

"I would submit another reason why it would be advisable at once to carry out the above suggestion. The line between Winnipeg and Selkirk passes a deposit of gravel suitable for ballast, while the impression is that there is no material on section 14 suitable for the purpose.

"Then the contractor would be enabled to go on with this part of his work at an early day, if the track was laid as proposed, on the extension of the Pembina Branch.

"SANDFORD FLEMING,

"Engineer-in-Chief."

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 2nd May, 1877.

"SIR,—With regard to the extension of the Pembina Branch, from Winnipeg to Selkirk, as referred to in my letter of the 19th April last, and your communication of the 30th of the same month, I would suggest that, in order that there may be no misunderstanding as to the terms upon which the work is to be done, an Order-in-Council be passed, accepting the proposal of Mr. Whitehead, and defining the terms.

"As I understand the proposal is as follows:—The grading (not exceeding 8,000 yards per mile) to be done at the price of Mr. Whitehead's original contract for the Pembina Branch, viz, 22 cents per yard. The other work to be done at the prices of Messrs. Sutton, Thompson and Whitehead's contract for section 15, viz: Ties, 40 cents each; track-laying and ballasting, \$290 per mile.

"It will be necessary, I think, to view this matter in the light of a supplementary contract for the Pembina Branch.

"It should not be done under the 15 contract, as the account for the Pembina Branch should be kept distinct from the main line.

"I am, etc., etc.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary of Public Works."

These were followed by an Order-in-Council in these terms:—

"Copy of a Report of the Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 11th May, 1877.

"On a Report dated the 28th April, 1877, from the Hon. the Minister of Public Works, stating that under the contract entered into with the contractors for section No. 14 of the Canadian Pacific Railway, the Government are required to furnish the rails to be used in the laying of the track.

"That the weight of rails necessary for that purpose is stated, by the Chief Engineer of the Canadian Pacific Railway, to be nearly 11,000 tons, and he adds that there are 918 tons already on the spot ready for use, at Selkirk, leaving, say, 10,082 tons still to be supplied.

"That it is necessary to provide for the transport of this quantity of rails from Winnipeg to Selkirk during the present season.

"That it has been ascertained that the probable cost of transportation by water, between the points named, would be \$30,000, and that to enable the service to be performed, at even this cost, the work would have to be done within the next five or six weeks, before the water of the river subsides.

"That it is suggested, that under these circumstances, it is expedient to extend the Pembina and Winnipeg Branch Railway, which at present terminates at Winnipeg, to Selkirk, a distance of twenty miles.

"That the Chief Engineer represents that Mr. Whitehead, contractor, has offered to do the grading of this extension line at the rate for grading mentioned in his contract, viz: 22 cents per cubic yard, and to lay the track at the rate given in his present Pacific Railway Contract, viz: \$290 per mile; and the Chief Engineer, by reducing the grades on the profiles, in some places about a foot, so as to decrease the number of yards of embankment to about 8,000 yards per mile, is able to furnish the following estimate of the cost of this twenty miles of railway, viz:—

Grading, 20 miles at 8,000 cubic yards, 160,000 yards at 22 cents....	\$35,200
Ties 45,000 at 40 cents.....	18,000
Track-laying, 20 miles at \$290.....	5,800
Bridging streams.....	1,000

	\$60,000

"It will be seen, the Minister observes, that the whole cost of laying the track, grading, &c., as above, is only \$30,000 more than the cost of transportation of the rails by the cheapest means available from Winnipeg to Selkirk.

"It further appears, that by opening up this line of railway at once, a deposit of gravel, suitable for ballast, would be rendered available for early use on section 14, on which section, the impression is, there is no such material to be found.

"That the line, it is pointed out, would also be useful for getting rolling stock, taken to Selkirk when it is required for the main line of the Pacific. In view of these considerations, the Minister is of the same opinion as the Chief Engineer, that it is advisable to proceed at once with the construction of this extension of the Pembina Branch Railway from Winnipeg to Selkirk;—and he accordingly recommends that he be authorized to issue instructions to Mr. Fleming, Chief Engineer, to direct the contractor (Mr. Whitehead), to carry out the work at the prices mentioned, viz: grading 22 cents per cubic yard, such price being the amount as per contract, for the construction of the branch from the main line to the boundary near Pembina, ties, 40 cents, track-laying, \$290 per mile, such price being those specified in the contract for ties on the main line between Selkirk and Keewatin, on contracts 14 and 15; bridging \$1,000, the whole cost not to exceed \$60,000.

"The Minister observes that it is not intended this road should remain in what the Engineer terms a "sub grade," as in that state it would not be so efficient, though it would answer the purpose for which it was required, for some years to come, viz: the transportation of materials, &c.

"The Committee submit the above recommendation for your Excellency's approval.

"Certified,

"W. A. HIMSWORTH,

"Clerk, Privy Council."

On the same day Mr. Braun telegraphed as follows:—

“11th May, 1877.

“Authorize Mr. Whitehead to proceed with the Pembina Extension, as part of the first contract, at twenty-two (22) cents for earth-work, and the other work at prices as per his contract (15.)

“F. BRAUN,
“Secretary.”

“J. H. ROWAN, Winnipeg.”

And the following letter was sent to the acting Engineer-in-Chief five days later:—

“16th May, 1877.

“SIR,—I beg to inform you that, on the 7th instant, Mr. Rowan was instructed, by telegraph, to authorize Mr. Whitehead to proceed with the works on the Pembina Extension, as part of his first contract, at twenty two (22) cents per cubic yard for earth excavation, and the other work as per prices in his contract for section (15) fifteen.

“I have the honour to be, Sir,

“Your obedient servant,

“F. BRAUN,
“Secretary.”

“MARCUS SMITH, Esq.,

“Acting Chief Engineer,

“Canadian Pacific Railway, Ottawa.”

In accordance with the suggestion made by Mr. Fleming at the close of his letter of the 2nd of May, above set out, this was treated as a supplementary contract for the Pembina Branch. It was, nevertheless, not a supplementary contract to that one, unless the agreement to build any portion of the railway, is supplementary to the agreement by which an adjoining portion was built. No competition, public or otherwise, had been invited at any time for the work done under the arrangement known as contract 5a. As before mentioned in our report on contract 5, the specifications on which that was based limited the distance within which the work was to be done, and for which tenders were to be received to the southern and central sections of the Pembina Branch, the southern one embracing townships numbers 2, 3, 4 and 5, and the central one numbers 6, 7, 8 and 9, the northern limit of this whole distance being a point several miles south of St. Boniface. Moreover, the work itself, under contract 5, covered only one of the items mentioned in the telegram of Mr. Braun, of the 11th May. That telegram was intended to cover, at least, the four items mentioned in the Order-in-Council, viz.: grading, ties, track-laying and bridging; contract 5 covered only the road-bed described

in Mr. Fleming's specification of the 8th of August, 1876, and relating to that contract as follows:—

"Section 5. The work now to be placed under contract is the excavation and grading required in the formation of the road-bed, or so much thereof as the Minister of Public Works may determine within the limits of the two sections above referred to."

As a fact, this telegram of Mr. Braun did not limit the work to that described in the Order-in-Council above set out. Neither did his subsequent letter of the 16th May to Mr. Smith.

Under the arrangement known as contract 5 A, many different kinds of work have been performed and paid for, some within the meaning of the said Order-in-Council, but a large proportion beyond it. The total outlay has been \$161,124. No part of the work was submitted to public competition. More than \$100,000 of the whole cost was expended without the support of either competition or an Order-in-Council. Some of this \$100,000 was consumed by allowing a price for work twice as high as would have been paid had it been submitted to competition.

On one item \$24,682 was given for off-take ditches at the rate of 45 cents per yard. The contractor himself testified that if this had been let by tender, it might have been done at one-half the price he got.

On this section, between St. Boniface and Selkirk, the work performed includes about twenty classes, instead of the four named in the Order-in-Council. They are stated in detail in Mr. Fleming's report of 1879, page 126. The expenditure there mentioned has been increased before the date of our Commission to the sum before mentioned by us. Mr. Mackenzie, Mr. Trudeau and Mr. Braun have been examined by us, with a view of learning the reason for the telegram of the 11th of May, awarding the high prices of section 15 to all the work to be done on this extension of the line except the one item at 22 cents, but no one of them was able to inform us. Mr. Fleming said:—

"The whole thing seems to be a mistake. There was no intention of doing off-take ditches in the first place."

Mr. Smellie, on the 16th of July, 1877, mentioned the matter in a letter to the Secretary, and called attention to the excess in the expenditure beyond the \$60,000 authorized by the Order-in-Council, and pointed out the high price of 45 cents which had been charged for off-take ditches. Subsequently he called the attention of Mr. Marcus Smith, the acting Chief Engineer, to

this item; but Mr. Marcus Smith decided that Mr. Whitehead was entitled to the price charged, it being the same as that which had been allowed on section 15. Mr. Smellie's recollection is that Mr. Marcus Smith said this price was authorized by the Order-in-Council. That view could hardly be maintained, since the Order-in-Council specified the items to which it applied, and off-take ditches was not one of them. It is probable that the foundation for the decision was that the telegram of the 11th of May, and the letter of the 16th of May, authorized the prices of section 15 to be applied to all items except the one mentioned in these communications.

Whether sections 3, 4, 12 and 16 of the Canadian Pacific Railway Act of 1874, taken together, required this the construction of one of the branches to be let by public competition rather than by Order-in-Council, is a question upon which we do not think it necessary to give an opinion.

The evidence leads us to conclude that in obtaining the prices which have been paid ostensibly under this contract, the contractor got an undue advantage, namely, a higher price for some of the work than it was worth, and higher than that at which it could have been otherwise procured; that the action of the Department in directing this work as it was directed had the effect of increasing unnecessarily the cost of the railway.

The work has been completed, and the following sums expended upon it up to the 30th of June, 1880 :—

30th June, 1877..	\$ 990 00
" 1878.....	100,610 00
" 1879.....	40,200 00
" 1880.....	19,324 97
	<hr/>
	\$161,124 97

CONTRACTS NOS. 6, 7, 8, 9, 10 AND 11.

Steel Rails and Plates, Bolts and Nuts.

These contracts cover the purchase of 50,000 tons of steel rails, accompanied in each case by fish-plates and in some by bolts and nuts. The names of the contractors and the quantities taken from each, as well as the prices, are set out below. The prices of bolts and nuts are mentioned

where they were contracted for; that of the fish-plates was the same as the rails:—

No of contract.		Tons of Rails	Price.	Price of Bolts and Nuts if furnished.
			\$ c.	\$ c.
6	Guest & Co	5,000	54 00	93 29
	" "	5,000	55 24	93 29
7	Ebbw Vale Steel, Iron and Coal Co.....	5,000	53 53	117 41
8	The Mersey Steel and Iron Co	20,000	54 26	—
9	The West Cumberland Iron and Steel Co.....	5,000	53 33	97 33
10	" " " "	5,000	53 33	97 33
11	Naylor, Benzon & Co.....	5,000	51 10	—

The quantity to be supplied under the last of these contracts was delivered in England. There the price was £1 sterling less than at Montreal where the delivery was to take place under the others. The contracts Nos. 6, 7, 8, and 9 were based on tenders made in a public competition in November, 1874. Those numbered 10 and 11 were brought about by offers from the contractors, spontaneously made some weeks after that competition was over. The first advertisement for tenders was as follows:—

"TENDERS FOR STEEL RAILS.

"Tenders, in quantities of not less than 5,000 tons of steel rails, will be received by the undersigned not later than Thursday, the 8th October, 1874.

"The tenders to state the name of the maker and the price per ton of 2,240 pounds, delivered on the wharf at Montreal during the season of navigation of the year 1875; the last delivery to be not later than 1st October.

"Payments will be made of 85 per cent. of the delivered price on the bills of lading in England.

"Weight of the rails to be 90 tons to the mile of railway.

"Tenders to be marked "Tenders for Steel Rails"

By Order.

" F. BRAUN,

Secretary."

" DEPARTMENT OF PUBLIC WORKS,
OTTAWA, Sept. 29, 1874."

Before the day here named, the 8th of October, it was decided to prolong the period for the receipt of the tenders, and the same advertisement was continued, with this addition:—

“POSTPONEMENT.

“The period for receiving tenders for the steel rails is postponed until the 16th November next.

“By Order.

“F. BRAUN,
Secretary.

“DEPARTMENT OF PUBLIC WORKS,
“OTTAWA, 3rd October, 1874.”

We take up each of these contracts hereafter, and report upon it as a separate matter without reference to the expediency of the purchase covered by it; in the meantime we confine ourselves to the action of the Department in providing the 50,000 tons.

There was no Order-in-Council authorizing the purchase of this quantity or any part of it; it was effected by the Department of Public Works under the direction of the Minister.

We have enquired into the reasons which led to this action, and have examined as witnesses the gentlemen who were at the time filling the respective offices of Minister of Public Works, Deputy-Minister and Engineer-in-Chief. The evidence shows that they who were charged with the responsibility of the purchase were impressed with the belief that some of the rails ought to be bought without delay, and irrespective of price. We cannot, however, define the extent of the purchase which was due to this belief, as distinguished from that to be attributed to other causes, because the need of any particular quantity as a feature of the transaction was not deemed to be of sufficient importance to cause the Minister or any of his subordinates to estimate or report upon it.

The evidence shows that the purchase was brought about at the instance and upon the recommendation of Mr. Fleming, who was Chief Engineer, Mr. Mackenzie, as Minister, having adopted his recommendation, and ordered the several contracts. The advertisement for tenders invited offers for no more than 5,000 tons, the quantities beyond that were decided on after the opening of tenders in November, 1874.

The traces of the steps which led up to the conviction in Mr. Fleming's mind of the propriety of this purchase, and to the decision by Mr. Mackenzie to follow Mr. Fleming's views to the extent he did, are very indistinct.

The expediency of having any trace, seems to have first occurred to these gentlemen when the matter was afterwards being discussed in Parliament.

Mr Fleming testified that in March, 1876, "when the matters were fresh" in his mind, he prepared a memorandum respecting this purchase; that he supposed the memorandum was made at the request of the Minister; that Parliament was then sitting, and the subject was under discussion; that his communications with the Minister prior to and during the transaction, and up to the making of the memorandum, had been chiefly verbal, the only exception which he knew of was that he had furnished a draft specification of rails to be acted on if thought best: that this memorandum gave a history of the transaction as far as he knew, and he would "very much rather trust to that than to his recollection."

Mr. Fleming said he thought it was shown to the Minister. It is recorded in the Department, No. 11,160, on 3rd April, 1876, and is as follows:—

(Memorandum.)

"During the summer of 1874, advices from England showed a great decline in the price of steel rails. It was generally considered that they had all but reached the lowest rate, and that an excellent opportunity presented itself of providing a quantity of rails, at lower prices than they would in all probability be obtained for at any future period. Early in August, 1874, the Chief Engineer mentioned the matter to the Minister of Public Works, and advised that steps should be taken to secure such quantity as might be deemed advisable. On the 13th of the same month he renewed his recommendation, and furnished a draft specification to be acted on if thought best.

"The Chief Engineer was absent from Ottawa until near the end of September, when he again renewed his recommendation to secure the rails. A notice calling for tenders on the 8th October was advertised on the 29th September; on the 3rd October the time was extended for receiving tenders to the 16th November, and specifications dated October 3rd were printed. By the letter, a copy of which is attached hereto, it was provided that tenders would be received on the 16th November following.

"It was felt that to advertise for tenders for rails for the Pacific Railway, or for any considerable portion of it, would defeat the object in view, viz., to secure rails at a low rate, and hence the character of the advertisement and specification.

"'Pacific Railway' is not mentioned in either, and tenders for a large quantity are not invited.

"Tenders for the delivery of 350,000 tons were received, the prices ranging from \$53.53 to \$82.73 per ton, delivered in Montreal.

"The average price was \$57 per ton.

"The lowest tenders were:

From Cox & Green, for West Cumberland Co.....	\$53 53 per ton.
From Joseph Robinson, for Ebbw Vale Co.....	53 53 " "
From Cooper, Fairman & Co., for Mersey Co.....	54 26 " "
From Post & Co., for Guest & Co. (mean)	54 62 " "

"Contracts were entered into with these parties at the above prices for all the rails they were willing to deliver, viz :

West Cumberland Co.....	5,000 tons.
Mersey Co.....	20,000 "
Ebbw Vale Co.....	5,000 "
Guest & Co.....	10,000 "

Total 40,000 tons.

"In addition to the above it was arranged to accept the most favourable terms for the delivery of the rails f. o. b. in England for transportation to British Columbia. Accordingly contracts were made as follows :

West Cumberland Co., for 5,000 tons, at \$48 67.....	f. o. b.
Naylor, Benzon & Co., for 5,000 tons, at \$51.10.....	f. o. b."

This is a narrative of two matters concerning the purchase now under consideration : one, the reason for action which the Chief Engineer thought proper to lay before the Head of his Department; the other, the action which followed. For the present we may dismiss that portion of it which deals with the action taken. As to the reason thus recorded by Mr. Fleming, it is to be noticed that he avoids all mention of requirements ; that was a subject upon which he would have some actual knowledge and upon which, if called upon, he would be expected to assume some responsibility.

We interpret his memorandum as a careful declaration that no such responsibility was cast upon him ; that the time when any definite quantity of rails would be required for use, was not a material element in the expediency of purchasing at that period, and that the purchase was made, as a whole, without any serious consideration of that feature.

The single idea which Mr. Fleming appears to have had at that time connected with the proposition to buy and to have communicated to the Minister, is what he described while giving evidence as "the principal reason" for the purchase, namely, the "supposed low price."

During the course of their evidence, however, both Mr. Mackenzie and Mr. Fleming intimated that the need of some rails for early use was a reason which was mingled with the low price as a motive for the purchase of the 50,000 tons, but neither was able to state to what quantity this reason would apply.

We do not think that the necessity of procuring a part can leaven the whole transaction, and that, in considering the action of the Department on this occasion, is it proper to speak of different, though undefined, portions of the whole quantity as if they had been bought for separate reasons. The

need of some for early use could not be even a remote cause for buying any of those which were understood not to be needed for early use, and the attractiveness of the market could not have induced the purchase of those which were to be bought "irrespective of price."

Therefore, when Mr. Fleming testified that the "supposed low price" was "the principal reason why the rails were purchased," we understood him to mean that that was the reason for purchasing the principal portion.

Mr. Fleming stated that he spontaneously approached Mr. Mackenzie with his advice concerning the matter.

Mr. Mackenzie testified that Mr. Fleming first brought the purchase of rails to his notice, saying that it was absolutely necessary that rails should be had as soon as possible, as it would take a long time to transport them, and construction could not go on without their being on the ground; that the prices of rails were then at the lowest rate which they were likely to reach, and that as large a lot as possible should be secured, Mr. Fleming being very urgent in these representations; that before adopting a conclusion he weighed to some extent the reasons which Mr. Fleming gave; that it was a mere matter of speculative opinion as to the price being at the lowest, but that he certainly thought Mr. Fleming's representations were right as to the necessity of having rails very soon, irrespective of price; that, in judging of the necessity for rails, the quantity would be a material element, and would be in proportion to the distance to be provided for, that he could not say precisely the distance over which the railway was then expected to proceed, but that there was then every probability of several hundred miles being placed under construction within a year. His recollection was that, except those to be used on the Pembina Branch, the first necessity was to provide for the line between Thunder Bay and Red River. This branch would require (at the ordinary rate of ninety tons a mile), in all, less than 10,000 tons; that as to the further quantity, the time at which they would be required weighed in the decision, but he declined to explain whether the necessity of having them for use at any particular period was a reason for the purchase irrespective of price, putting his objection to do so on the ground that the act of every Department must always be assumed to be the act of the Government, and therefore beyond the reach of our enquiry. Our nearest approach to information on the sub-

ject of the quantity which, at that time, might have been deemed requisite, was through an indirect answer of Mr. Fleming.

He was asked if 20,000 tons were then considered as likely to be required. His answer was that, if his impression had been right with regard to a speedy rise in the price of rails, it would have been advisable to lay in a much larger quantity than 10,000 tons. The natural inference from this answer seem to us to be that it would not have been deemed advisable to lay in a much larger quantity than 10,000 tons, but for the expectation that there would be a rise in the price.

Mr. Trudeau has stated that there is not in the records of the Department any report or memorandum showing the quantity of rails which, at the time of this purchase, was estimated to be required within any given time or for any specified work.

Mr. Fleming said he did not think that before the transactions he ever reported on the quantity which he deemed it advisable to buy; that that was decided by the Minister after the tenders came in; that he cannot explain whether there ever was anything more than an informal conversation between him and the Minister concerning this transaction; that in his experience he did not remember of a purchase as large as even 5,000 tons having been accomplished without something more formal from the Engineer than a conversation; that in the case of the Intercolonial Railway there were written reports from the Commissioners as well as from himself advising the purchase of rails; that when the conversation took place between him and the Minister on this matter it was not known how large the transaction would be; that they only asked for 5,000 tons in the advertisement, and the transaction grew to be a larger one at a later date; he could not say at what time he had supposed they would be required when he recommended their purchase; that he made no recommendations as to the quantities till after the tenders came in; that if he had foreseen that the price would go down as it did, he would not then have recommended the purchase to any great amount. Besides the information to be gained from the testimony of these gentlemen, some is to be got from returns to Parliament concerning the use which was afterwards made of the rails included in these purchases, and of the distances of the railway which were subsequently, from time to time, ready for the use of rails:—

A return to the Senate showing the use which had been made during the year 1876 of any portion of these rails, dated 5th March, 1877, is as follows :—

	Tons.
Laid on track from Fort William westward 25½ miles.....	2,295
Delivered at railway wharf, Fort William.....	14,057
Delivered opposite Winnipeg at St. Boniface.....	12,008
“ at Selkirk, Red River.....	918
“ for the Intercolonial Railway at Halifax.....	11,160
“ at Penitentiary wharf, Kingston.....	4,575
“ at Nanaimo, British Columbia.....	5,077
Total.....	50,090

The evidence taken before us as to the dates at which rails were employed on the different contracts, shows that a large proportion of the 50,000 tons might have been purchased much later than the winter of 1874-75, and have been still in time for the use to which they were actually put.

Inasmuch, however, as the oral testimony before us and these returns together fail to show how far the subsequent events differed from those which in the fall of 1874 appeared probable, we do not feel justified in attempting to define accurately, the quantity which was bought in excess of what was on that day likely to be deemed requisite. The evidence leads us to believe that it was a large quantity, and we proceed to consider separately the action of the Department concerning that undefined portion, which was so bought, beyond the understood requirements of the time, and according to the evidence, bought upon the alleged attractiveness of the market.

The Department in this instance, because of a speculative opinion concerning the future of the market, purchased property expected to be required for use at a future day, but before there was supposed to be any necessity to procure it.

We do not offer any remark as to the propriety of a step of this character, but assuming that such a course was open to a Department, we feel called upon to report whether it was taken with the caution and consideration of results, that would be generally shown by private individuals, before investing their own means in similar ventures.

Before dealing with the reasonableness of the speculation in these rails at the time it took place, it is well to see if there is any material distinction, in a pecuniary point of view, between a purchase of rails at such a time as

would provide them when required, and a purchase without reference to that, solely on the ground that a rise in the price might be expected.

In the first place, we must point out that the price for that quantity, which was bought beyond the need of the time, was actually higher than that of the quantity bought for the emergency, because the quantity required would be provided for first from the lowest tenders. For instance, assuming for the purpose of illustration, the required quantity to have been 15,000 tons at Montreal, it would have been satisfied by the three lowest tenders, as follows:—

West Cumberland,	5,000 tons at \$53 53
Ebbw Vale	“ “ “ 53 53
Guest & Co.,	“ “ “ 54 00

This would provide 15,000 tons at an average price under \$53.69.

An additional 5,000 tons at Vancouver, (the quantity which finally went there), would not raise this average, inasmuch as the acceptance of the second lot of 5,000 tons from the West Cumberland Company, furnished that, at £10 sterling=\$48.66, and this would, in fact, slightly diminish the average of the whole 20,000 tons.

Ending the transactions at these stages, viz: 15,000 tons at Canadian points and 5,000 tons in England, would have prevented the acceptance of the following tenders, all at higher rates, namely:—

The Mersey Co., at Montreal,	10,000 tons.
Cooper, Fairman & Co., “	10,000 “
Guest & Co, “	5,000 “
Cooper, Fairman & Co., Liverpool,	5,000 “

In order to compare the price under these purchases with those of the 20,000 tons assumed to be needed, it will be necessary to state the prices in Canadian currency. £1 Sterling=\$4.86, was the price for transatlantic carriage; therefore, adding that sum to the price of what was bought at Liverpool, will show what the price would have been if delivered at Montreal; the result would be as follows:—

Mersey Co.	10,000 tons at \$54 26
Cooper, Fairman & Co.	10,000 “ “ 54 26
Guest & Co.	5,000 “ “ 55 24
Cooper, Fairman & Co.	5,000 “ “ 55 96

These prices give an average of about \$54.70, higher, by \$1.01 per ton, on the last 30,000 tons than on the first 20,000 tons.

If the quantity needed was more than 20,000 tons, then the balance was bought at an average still higher than \$54.70, for each time one of the lower priced lots is taken from the aggregate, the average of the balance must be raised.

In the next place, the risk attending such a speculation would be greater with a Government than with an individual. A private party, buying in anticipation of a rise, could keep his property in some centre of demand, where it would be available for a rapid sale should the rise take place, and he would thus retain a chance of gain or prevention of loss, which he would be deprived of, should his purchase be available only by actual use at the end of an indefinite period.

It is not necessary to dwell on the improbability of selling advantageously steel rails lying at Vancouver or on the western lakes, for it is to be assumed that a sale of any part of these rails was never contemplated.

In Mr Fleming's memorandum of March, he says that it was thought that rails "had all but reached the lowest rate." This is, of course, alluding to some time not later than August, 1874. But either then or later in December, 1874, or January, 1875, when the rails were bought, if it had been made certain that they had actually reached their lowest rate, not only for that time, but for all time to come, still that certainty could not of itself have made the purchase a profitable speculation.

There was, in fact, but one event possible which could make the transaction anything but a losing one, and that was a rise in the price, so high and so continuous that it would keep pace with the interest on the purchase, the deterioration of the property, and all expenses incidental to the ownership up to the time at which it would be necessary to procure them for use. Anything short of this made a loss inevitable.

In order, therefore, that the Department might judge of the merits of the speculation, it would be necessary to have what was believed to be a well-founded estimate upon several data.

- (1). The times at which respectively the different portions of the whole quantity would be called into use.
- (2). The amount by which the price would be increased.
- (3). How far the increase would be temporary or lasting.

The evidence shows that there was before the Department no estimate upon any of these particulars.

It is obvious that any given day might be "a good time to buy" such rails as were necessary, in view of the period at which they were likely to be used, and still a poor time to buy those which were not wanted, and could only be turned to account when used, and for which the time of use was in an undefined future.

The tenor of the evidence shows that in the fall of 1874 there was an opinion amongst rail dealers that the price would rise. It had been falling from about £18 sterling, the price to which it had risen temporarily during the inflated period in 1873, until it was nearly as low as it had been in 1869-70, and consequently they who were obliged to provide rails would find it a good time to buy. That fact, however, does not touch the transaction we are considering, and it does not help us to see why the state of the market on that occasion, or the chances of it afterwards, should be assumed to be sufficient grounds for the Chief Engineer urging so earnestly as he did the large purchase, beyond the requirements of the day which took place on this occasion.

Mr. Mackenzie was asked what appeared to be the reasons in support of the view that the price of the day made it expedient to buy on this occasion. He said he knew of none except the fact. And being asked what that was, he said the price had reached a lower point than it had ever reached, and that Mr. Fleming thought it likely to rise. The tenor of his evidence was that throughout this matter he leant upon Mr. Fleming's judgment concerning the state of the market, and its probabilities in the future, and upon being asked whether he had not deemed it expedient to enquire into Mr. Fleming's reasons more deeply, than merely by hearing what was his conclusion, his answer was, "Well, of course, I adopted his reasons." Mr. Fleming stated that he had no doubt that he had said to Mr. Mackenzie: "You cannot purchase too many rails at that price."

We have examined Mr. Fleming on different occasions, with a view to learn the grounds for his strong opinion on this matter, and the reason for his pressing it as earnestly as he did. As to the grounds for his opinion, all the evidence on the subject points to the conclusion that he had none of any consequence, except the fact that a Mr. Sandberg had entertained that opinion, and had communicated it to him.

Mr. Fleming testified that from all he could learn the price of rails had then reached bottom, and there would be a rebound immediately ; that no one in the trade had expected it would go lower : that, in saying this, he meant of course, according to the information he had received. He explained what he had learned on the subject, and the source from which he had learned it. He thought at one time that he had had letters from two correspondents in England, a Mr. Sandberg and a Mr. Levesey, his advices coming "more especially from Mr. Sandberg."

Subsequently, he was not sure that he had heard from Mr. Levesey, but he defined what he had learned from Mr. Sandberg. This gentleman lived in London, and was looking after the interests of the Canadian public in this manner : he was employed as the Government Inspector of Rails, and was paid according to the quantity. For his services in this transaction he received £3,906 16s. 6d. stg. Mr. Fleming testified that the information in this case had been offered voluntarily by Mr. Sandberg. Mr. Fleming had, at first, no doubt that the letters from Mr. Sandberg were in the office. At a later day he said that they might be called either private or official ; they were not marked private, and yet were not written in a very formal manner. He thought there were several, and had made enquiry for them, but they could not be found. Mr. Burpé who had charge of the correspondence of Mr. Fleming as Engineer-in-Chief was called as a witness. He had heard Mr. Fleming's evidence concerning these letters and had searched for them, but had not found them, and said it would be useless to call anyone else in the Department, he having failed to discover them. He had also searched for copies of letters, if there were any, from Mr. Fleming to Mr. Sandberg, written prior to the purchase of these rails, and had found none. Mr. Fleming produced two diagrams, printed for private circulation, by Mr. Sandberg, purporting to show the fluctuations of the English rail markets (both iron and steel) one from 1862 to midsummer of 1880, and one from 1862 to end of 1874, and he thought that a similar one had been sent to him in some of the correspondence before alluded to. He said that according to his recollection his recommendation to Mr. Mackenzie was based upon the positive opinion of Mr. Sandberg, that rails had reached the lowest point that they were likely to reach, that Mr. Sandberg had said to him that it was the general opinion of rail makers that the price of rails had certainly reached bottom, and that his impression of the correspondence was that it was not a question of comparative profit to the manufacturers, but that rails could not be made to sell at a lower price, and

1862 x 1863 x 1864 x 1865 x 1866 x 1867 x 1868 x 1869 x 1870 x 1871 x 1872 x 1873 x 1874 x 1875 x 1876 x 1877 x 1878 x 1879 x 1880

20 £
19 £
18 £
17 £
16 £
15 £
14 £
13 £
12 £
11 £
10 £
9 £
8 £
7 £
6 £
5 £
4 £

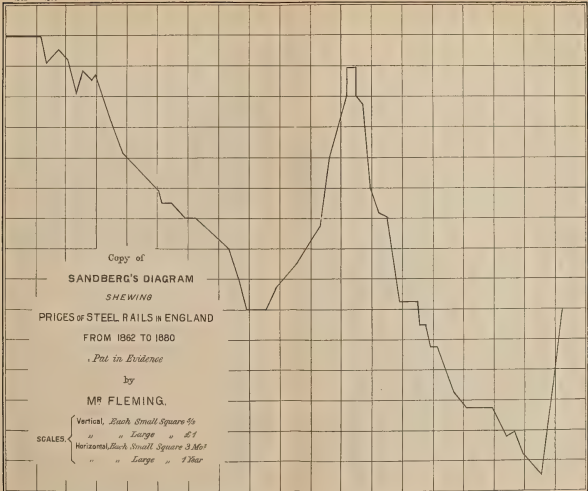
Copy of
SANDBERG'S DIAGRAM
SHEWING
PRICES OF STEEL RAILS IN ENGLAND
FROM 1862 TO 1880

Put in Evidence

by

MR FLEMING.

SCALES. { Vertical, Each Small Square $\frac{1}{2}$
 " " Large " £1
 Horizontal, Each Small Square 3 Mo^s
 " " Large " 1 Year



that this was the groundwork of his (Mr. Fleming's) opinion. He could not remember whether any reasons had been given by Mr. Sandberg, beyond the bare statement of his opinion that it was a good time to buy.

The great weight which Mr. Fleming attached to this correspondence from Mr. Sandberg made us anxious to see the text of it, not that we consider any views from Mr. Sandberg to be, of themselves, a reason for the action of the Department, but that we might see whether his opinions were really so extreme as Mr. Fleming thought them to be; and, if so, to see how far they would bear analysis.

Mr. Fleming had an impression that he handed these letters to Mr. Mackenzie while the matter was being discussed in the House of Commons (March, 1876). At our request he wrote to Mr. Mackenzie for them, and also sent a cablegram to Mr. Sandberg at London, England, to forward copies of any letters from Mr. Sandberg to him on this subject in 1874, but we have not had the advantage of seeing either originals or copies.

In the face of Mr. Fleming's circumstantial account of this correspondence, we cannot say that it was not of the character described by him, but we have no hesitation in saying that if he has correctly stated the substance of it, then a very slight investigation of facts, or a careful inspection of his own diagram would show that Mr. Sandberg's representations were not well founded.

Several periodicals published in England have been mentioned to us by witnesses as authorities on the general state of the rail market. We have examined two of them: "Iron" and "The Iron and Coal Trade Review."

We submit herewith an enlarged copy of one of the two diagrams before mentioned, as published by Mr. Sandberg and put in evidence by Mr. Fleming—so far as it relates to steel rails—having selected that which covers the longer period, from 1862 to 1880.

We find that though this diagram agrees generally with the fluctuations, or the tendency of the market from time to time, as shown in the periodicals before mentioned, so far as we have been able to see them, they are not always alike in the price given as ruling at the respective dates.

We account for this by assuming that neither in the diagram nor in newspapers can prices be given exactly the same as those which might govern actual transactions, and that such authorities do no more than give

what is conceived to be or to have been the average price at respective dates. It is in evidence before us that on the same day offers from different individuals will show a wide variation in prices. For instance, Mr. Fleming, in reporting on the tenders which were received upon this occasion, states that the average price of all the tenders for delivery in Montreal was, as nearly as possible, \$57.03 per ton, while some of the contracts were based upon the price of \$53 53 per ton. We assume that the price named in either the diagram or in any of the periodicals is what was understood to be the average ruling price at the various dates, but not the lowest which, at those dates respectively, could be obtained in actual transactions, especially for large purchases and such prompt terms of payment as would be offered by a Government.

These authorities would, nevertheless, be accurate enough to show whether the market was a rising, or a falling, or a steady one, between various dates or how otherwise, and we take it for granted that the prices given in any of these authorities as the ruling one for ordinary transactions, would bear about the same relation, at one time as at another, to those which would be named in individual transactions, where the quantities or the terms of payment might lead to some variation from the general price.

There can be no doubt that Mr. Fleming's approaching the Minister "early in August, 1874," was due to Mr. Sandberg's letters, for Mr. Fleming was asked the sources of the advices which, in his memorandum of March, 1876, he mentioned as having led to his recommendation, and he gave us the names of Mr. Sandberg and Mr. Levesy. Therefore, such letters must have been written not later than July, 1874.

It becomes material, in this connection, to bear in mind the strong view which Mr. Fleming says was communicated by the correspondence in question, and adopted by him on the strength of it, namely, that "it was not a question of comparative profit to the manufacturer, but that rails could not be made to sell at a lower price."

If Mr. Sandberg, in July or August, 1874, expressed the view that rails could not be made to sell at less than they were then selling at, it became palpable, in November, 1874, that he was an unreliable authority, for rails had continued to fall steadily from July to that time. The authorities, above mentioned, the diagram and the periodicals, show in November, 1874, a price, between £2 sterling and £3 sterling, less than when Mr. Sandberg's mid-summer letter first operated on the mind of Mr. Fleming. Other facts,

however, much more striking than this are exhibited by these authorities, facts which, if understood, could hardly fail to remove any belief that rails had never been so low, and could not be made to sell at that price. "Early in August," the date first named in Mr. Fleming's memorandum as the time of his approach to the Minister, the diagram gives the price as about £12 10s. During the whole of the years of 1869, 1870 and 1871, they had been selling at prices lower than that, and had, in fact, been for part of that time—some seven months (between November, 1869, and August, 1870,)—standing at £10 sterling. When the tenders were opened in November 1874, the rail market, according to the said authorities, was not so low as it had been four years before that time.

From mid-summer, 1870, the price rose, until early the next year, 1871, it was about £1 sterling higher. At that time the Government was receiving tenders for steel rails for the Intercolonial Railway, of which Mr. Fleming was Chief Engineer. On the 11th January, 1871, those tenders were opened, and contracts were afterwards entered into based on some of them; amongst others, one with the Ebbw Vale Co. at £11 sterling for delivery in England, other charges being added for inspection, insurance, and freight to Canada.

Taking these things into consideration, we do not see how Mr. Fleming adopted so readily the fallacious views said to have been communicated by Mr. Sandberg, nor why it should be supposed that, after November, 1874, rails should not only never get so low as they had been in 1870, but that they should rise so far above the price of that day as to outstrip interest, deterioration and expenses, up to the time at which it might become necessary to buy them.

The only letter of Mr. Sandberg, which Mr. Fleming put in evidence, was written on 17th December, 1874. This was after 40,000 tons had been bargained for; and our attention was called to the following portion of it, the remainder not relating to the subject:—

"It is, indeed, not unlikely that a strike would take place, which would probably send up prices, and, therefore, I am anxious to have everything square. By the enclosed card of prices you will see that you have bought both this and the last order at very favorable periods. In fact, in the whole of my experience, I know of none having used the time better, and I only hope that this order will be executed a little quicker than that at Barrow, which is still lingering on slowly."

We do not see in this remark of Mr. Sandberg's anything further than the fact that the course of the Department had met with his approbation.

Mr. Sandberg was not in a position to lose by large purchases for Canadian use, and, if his views have been correctly stated, it is evident to us that, during all these transactions, he has looked at but one side of the question. He does not mention in this letter what purchases he alludes to, but we take it for granted that Mr. Fleming would not have offered it to us unless it referred to those for the Pacific Railway, about which he was giving evidence. These included 40,000 tons at a price averaging \$54.17 at Montreal. The day after Mr. Sandberg was sending his congratulations upon this transaction, other persons, who were parties directly interested on their own behalf, were sending a communication of a different tenor. The West Cumberland Company, through Messrs. Cox & Green, their Montreal agents, on the 18th December, spontaneously offered to the Department 5,000 tons more than they had previously bargained for, at \$53.53 per ton, or 64 cents per ton less than those obtained by the purchase approved of in Mr. Sandberg's letter.

The fact that Mr. Sandberg volunteered his views, having no responsibility in the matter, that he had no interest in limiting the purchase of rails by the advantage it would bring to Canada, that the views said to have been advanced by him from time to time could then have been ascertained to be not well founded, lead us to think that Mr. Fleming's belief in the "supposed low price," must have been a weaker element in the recommendation to purchase than he now thinks it was. There was, then, another motive for his advice to the Minister, which he said was coupled with the attractiveness of the market, and the presence of it may have made him careless in testing the validity of the other.

In Mr. Fleming's evidence, after stating that there had been a good deal of hesitation about the beginning of the works, he gave as a reason operating on his mind for the expediency of the transaction, and in addition to the need of rails and the low price, the fact that he, as a citizen of Canada, was very anxious to see the railway commenced; he said he did not separate this from the other reasons; they all entered his mind at one time; and he thought this was one of his motives for recommending this purchase, though, if standing alone, he would not have been actuated by it; still he said that, according to his view, this might have been a perfectly good reason, though the others were positively bad.

The unfortunate results of Mr. Mackenzie omitting to examine more deeply than he did Mr. Fleming's reasons upon the probable future of the

rail market, and of adopting them, as of course, is now apparent. We doubt that any person, in considering the expediency of investing his own means in a speculative purchase, would take the future fluctuations of any market for any article as a matter so entirely within the professional knowledge of an engineer, as to make his opinion on them necessarily correct.

Before these purchases were made on the alleged ground of a strong probability of a rise in the price of rails, there was at least one other source of information open to the Department in addition to the view of the Chief Engineer. The opening of the tenders disclosed offers for seventy times the quantity asked for. This was some intimation that one of the causes of a rise in price, scarcity in the supply, did not exist.

Instead of rising, as Mr. Sandberg is said to have predicted, the price of rails fell almost continuously, until about midsummer of 1879, when it was in the neighbourhood of £4 10s. sterling, that is, less than half that at which it had stood as before mentioned in 1869-70. After this it rose again rapidly and steadily till it reached about £10 sterling in the spring of 1880.

In addition to the sworn testimony on the subject of this purchase Mr. Fleming has forwarded to us the correspondence hereinafter set out.

Though these letters came to us as late as their dates indicate, we should have cross-examined Mr. Brydges on his statement had we seen it to be material.

The main fact established by the letters is that Mr. Sandberg expressed, in 1874, strong views in favour of large purchases. That has already been established by sworn testimony. It is also asserted that Mr. Brydges held the same opinion as Mr. Sandberg so far as this: that prices had then touched bottom, and that he had advised Mr. Mackenzie of his entertaining this opinion. He does not mention when he communicated this, and there is no reason to think it was before the purchase under consideration, or had any influence upon it. Moreover, the belief that the price was then at the bottom would do no more than encourage purchases of required quantities. Beyond that, as before explained, nothing would be bought with judgment, unless there was a definite belief on other points, such as the time at which the rails would be used and the extent and continuance of the rise in the price. The letters fail to touch any of these points. They are as follows:—

" OTTAWA, 25th January, 1882.

" N. F. DAVIN, Esq., Secretary,
" Canadian Pacific Railway Commission.

" SIR,—I wrote you on the 14th instant, enclosing certain papers and documentary evidence for the Commission.

" I have not succeeded in obtaining the letters of Mr. Sandberg, which the Commission desired when I saw them recently. I enclose, however, a letter from Mr. C. J. Brydges, dated 9th January, 1882, in which he refers to a letter of Mr. Sandberg in 1874, and refers, also, to the prevalent opinion at that time in England amongst the most experienced dealers in rails, that prices had then touched bottom. Mr. Brydges adds that he advised Mr. Mackenzie that he held the same opinion, and that it was generally entertained by all persons who had any dealings in rails.

" I enclose, also, for the information of the Commissioners a letter from the Hon. A. Mackenzie, dated 13th January last, in which he states that he has a very distinct recollection of a letter from Mr. Sandberg, concerning steel rails, which bore out the general impression that prevailed in 1874, that prices had then reached the lowest prices likely to be reached. I may mention that Mr. Mackenzie's letter is in reply to a note which, at the request of the Commissioners, I sent him, enquiring if he remembered the circumstances which I had referred to in my evidence, and asking him to forward to me the letter, or letters, of Mr. Sandberg, if he could find them.

" Yours truly,
" SANDFORD FLEMING."

" MONTREAL, 9th January, 1882.

" MY DEAR SIR,—I have your note of the 5th. I sent all my papers re Intercolonial to Ottawa when I gave up that charge.

" I am sure, however, that my letter to Mr. Mackenzie was not amongst them. It was a private letter, enclosing one from Sandberg, giving an account of the condition of the different steel rail mills in England, and the prevalent opinion at that time amongst the most experienced dealers, that prices had then touched bottom.

" I advised Mr. Mackenzie that that was also my own opinion, and that it was also entertained here by all those who had any dealings about rails.

" Yours very truly,
" C. J. BRYDGES."

" SANDFORD FLEMING, Esq.,
" Ottawa."

" TORONTO, 13th January, 1882.

" My Dear Sir,—I remember very distinctly getting a letter of Mr. Sandberg's, concerning the price of rails, in 1874, which bore out your impression that prices had then reached the lowest price likely to be reached. I received this letter from either you or Mr. Brydges. I cannot say whether I have that letter, but will examine all my papers as soon as I can spare time, and if I find it I will forward it to you at once.

" I am yours faithfully,
" A. MACKENZIE."

" SANDFORD FLEMING, Esq.
" Ottawa."

The evidence leads us to the following conclusions :—

That a large portion of the 50,000 tons now under consideration, was purchased without any defined view as to the times at which they would be wanted, and without reference to those times, but solely upon the ground that a rise in the price of rails was to be expected ;

That such purchase was made by direction of the Minister of Public Works without the authority of an Order in Council ;

That the said purchase was urgently recommended by Mr. Fleming, the Engineer-in-Chief, for the alleged reason that the rail market was not likely to be thereafter so favourable to purchasers as it then was ;

That the Minister adopted without question the view of Mr. Fleming upon the probable future state of the rail market ;

That in so recommending the purchase of this quantity on speculation, Mr. Fleming was actuated by two motives, one being the fact that as a citizen of Canada he was anxious to see the railway commenced, the other, his belief in the attractiveness of the market ;

That Mr. Fleming's opinion as to the state of the rail market was derived almost exclusively from representations which he said were made to him by Mr. Sandberg, then employed in England by the Canadian Government as an Inspector of rails, and paid for his services according to quantity ;

That Mr. Sandberg was not responsible to the Government for his said representations, and was not interested in limiting the purchase to such quantities as might be profitably bought ;

That if the foundation of Mr. Fleming's recommendation had been enquired into, he could not have shown any, sufficient to induce an ordinary business man to purchase on speculation at that time, steel rails at the price paid for these ;

That if the purchase of the rails in question had been delayed until the times, respectively, at which it would have been necessary to provide them, a material saving in the cost of the railway would have been effected.

On the 17th of November, 1874, the day after the final receipt of tenders, those which had reached the Department in due time, were then opened, in presence of the Deputy Minister and Mr. W. J. Tilley.

Although the advertisement asked only for offers to deliver at Montreal, some were found to be proposals for delivery at other points.

Twenty-nine were received and opened, after which the Chief Engineer submitted the following report :—

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 19th November, 1874.

"SIR,—As requested, I have examined the tenders received by the Department for furnishing steel rails, and have prepared a schedule of these tenders according to the several rates. I find that tenders have been received for the delivery of about three hundred and fifty thousand (350,000) tons. The average price of all the tenders for delivery in Montreal is as near as possible \$57.03 per ton. The lowest tenders for one hundred thousand (100,000) tons seem to be as follows :—

Tenders.	Delivery at Montreal.	Delivery at Thunder Bay.	Delivery at Duluth.
A. Cox & Green.....	5,000 tons at \$53 53		
C. Jos. Robinson.....	5,000 do at 53 53		
F. Post & Co.....			5,000 tons at \$58 16
F. Post & Co.....			5,000 do 59 40
S. Cooper, Fairman & Co.....		10,000 tons at \$59 86	
B. Cooper, Fairman & Co.....	10,000 tons at \$54 26		
C. Thomas Reynolds & Co.....	5,000 do 54 75		
X. Rice, Lewis & Son.....	10,000 do 55 00		
V. John Fraser.....	15,000 do 55 17	60 76	60 76
R. T. V. Allis.....	20,000 do 55 76		60 76

"There is one tender for the delivery of 10,000 tons at Vancouver's Island (Tender S) at \$64.75.

"SANDFORD FLEMING.

"The Hon. A. MACKENZIE,

"Minister of Public Works."

The schedule embodied in this report does not describe accurately the substance of the tenders to which it refers. The tenders sent in by Perkins, Livingston, Post & Co. were offers to deliver at Montreal as well as at Duluth, and the names of the different tenderers are given without discrimination between principals and agents. The following is a correct schedule, showing the substance of the tenders up to 100,000 tons referred to in the above report, as far as they relate to the points of delivery named in that report :—

R.

SCHEDULE.

Letter of Tender.	Principals.	Agents.	Quantity in tons.	Price.	Delivery at
A.	West Cumberland Co.	Cox & Green.....	5,000	\$53.53	Montreal.
C.	Ebbw Vale Steel and Iron Co.....	Jos. Robinson & Co...	5,000	53.53	do
F.	Guest & Co.....	Perkins & Co.....	5,000	{ 54.00 58.16 58.91	do or Duluth. or Thunder Bay.
D.	The Mersey Steel and Iron Co.....	Cooper, Fairman & Co	10,000	54.26	Montreal.
C.	The Aberdare Co.....	Thos. Reynolds, jr....	5,000	54.75	do
X.	Rice, Lewis & Co.....	None.....	10,000	55.00	do
S.	Cooper, Fairman & Co.	None	10,000	59.86	Duluth or Th'der Bay
V.	John Fraser.....	None	15,000	55.17	Montreal.
F.	Guest & Co., for an additional quantity..	Perkins & Co.....	5,000	55.40	do
R.	T. V. Allis.....	None	20,000	{ 55.76 60.76	do Duluth.
S.	Cooper, Fairman & Co.	None	10,000	64.75	Vancouver Island
		Total.....	100,000		

The following tenders were received : —

“(Form of Tender.)

“PUBLIC WORKS OF CANADA.

“TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

“The undersigned do hereby tender to deliver at the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, 5,000 tons to 10,000 tons Bessemer steel rails, with proportionate quantities of fish-joints, at the following rates :—

Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at \$55 per ton ; iron bolts and nuts at \$99 per ton.

The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

“RICE, LEWIS & CO.,

“Toronto, Ontario.”

"(Form of Tender.)"

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, ten to fifteen thousand tons, Mersey & Bolton Co. make, Bessemer steel rails, at the following rates:—

"Per ton of 2,240 pounds—£11 6s. 9d. sterling; Bessemer steel fish-plates, £11 16s. 9d. sterling; iron bolts and nuts at (\$100.80) one hundred dollars and eighty cents per ton.

"The undersigned is ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to his ability to complete the contract.

"I further tender to deliver at Duluth or Thunder Bay, Bessemer steel rails as above, at £12 9s. 6d. sterling; steel fish-plates at Duluth or Thunder Bay, at £12 19s. 6d. sterling per ton of 2,240 pounds; fish-bolts delivered at Duluth or Thunder Bay at \$107 per ton of 2,240 pounds.

"I also tender for delivery at French River at a reduction of 2s. per ton on rails and fish-plates.

"The wharfages, or dock or harbour dues at Duluth, Thunder Bay or French River, if there should be any, are excepted in the above prices.

"JOHN FRASER,
"Kingston."

"(Form of Tender.)"

PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, 5,000 to 10,000 tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:

"Per ton of 2,240 pounds—Rails to be of our own manufacture, 'Dowlais Steel'—5,000 tons Bessemer steel rails and fish-plates at \$54 per ton; 5,000 tons additional at \$55.24 per ton; iron bolts and nuts at \$93.29.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"GUEST & CO.,
"Dowlais, Wales.

"PER PERKINS, LIVINGSTON, POST & CO.
"Agents, 59 Liberty Street, New York.

"We beg to say that we have furnished Guest & Co's. steel rails to the following roads, and would refer the Government to the gentlemen mentioned: Sloanes, President,—Delaware, Lackawanna and Western Railway Co., 25,000 tons; Wm. H. Vanderbilt, President,—New York Central and Hudson Railway, 45,000 tons; Wm. Thomson, Director,—Canada Southern

Railway, 24,000 tons, and many other roads in the United States, making a total of about 200,000 tons.

"PERKINS, LIVINGSTON, POST & CO."

"OTTAWA, ONT., November 14th, 1874.

"DEAR SIR,—Should the Government prefer to take these rails delivered at the following points--Duluth, Fort William and Georgian Bay, instead of Montreal, we can deliver them at Duluth or Georgian Bay at \$4 per ton additional, and at Fort William at \$4.75 additional, conditional as to the delivery at points named, that there be a sufficient depth of water for vessels to go thereto, and that the consignees are to unload. Not knowing if it is the intention of the Government to insure the various cargoes on the lakes, we have not included the lake insurances on the inland freights, \$4 and \$4.75, which would be about 16 cents per ton.

"Your obedient servants,

"PERKINS, LIVINGSTON, POST & CO.,

"Agents of GUEST & Co.

"The Minister of Public Works."

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, 20,000 tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at \$55.76 ; iron bolts and nuts at \$94.50 per ton of 2,240 lbs., with the option of delivering at Duluth or Georgian Bay at \$5 per ton additional.

"The undersigned is ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to his ability to complete the contract.

"T. V. ALLIS.

"Dresel Building, New York.

"Will furnish from one or more of the following manufacturers, viz :—

"Barrow Hæmatite and Steel Co., England.

"Brown, Baily & Dixon's " "

"Manchester Steel Co., " "

"Dowlais Steel Co., " "

"C. Cammell & Co. Steel Co., " "

"Mersey Steel Co., " "

"Ebbw Vale Steel Co., " "

"Limus-Landore " "

"Creuzot " France

"Terre Noire " "

"Petin Gaudet " "

"Very respectfully,

"T. V. ALLIS."

"(Form of Tender.)

"7 LAWRENCE-POUNTNEY HILL,

"LONDON, 29th October, 1874.

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, five thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 sterling; iron bolts and nuts at £24 2s. 6d.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"For the Ebbw Vale Steel, Iron & Coal Co. (Limited).

"JOSEPH ROBINSON & Co.,

"Agents.

"CANADA ADDRESS :—

"St. Lawrence and Ottawa Railway Co's. Office,

"Ottawa, Canada."

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver, F.O.B., Liverpool, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, five to ten thousand tons 'Mersey' or 'Bolton' brands Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £10 10s. 0d. sterling; iron bolts and nuts at £19 10s. 0d. sterling.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery of the above at some good port in Vancouver Island, B.C. :—

"Bessemer steel rails, at.....£13 5 3 sterling.

Fish-bolts, at.....22 5 3 do.

"COOPER, FAIRMAN & CO.,

"Montreal.

"(Form of Tender.)"

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Duluth or Thunder Bay, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five to ten thousand tons, brand 'Mersey Steel and Iron Co.,' Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £12 6s 0d sterling; iron bolts and nuts at \$107 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery at French River, at a reduction of two shillings per ton on above prices, any wharfage or harbour dues on ports, payable by Government.

"COOPER, FAIRMAN & CO.,

"Montreal."

"(Form of Tender.)"

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five to ten thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds--Bessemer steel rails and fish-plates at £11 3s. 0d. sterling; iron bolts and nuts at \$101 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"The Mersey Steel and Iron Co.,

"of Liverpool.

"Per COOPER & FAIRMAN, Agents,

"Montreal.

"TENDER FOR STEEL RAILS.

"13 AND 15 HOSPITAL STREET,

"MONTREAL, 10th Nov., 1874.

"DEAR SIR,—We beg, in the name of our principals, Messrs. The West Cumberland Iron and Steel Co. (Limited), Workington, England, to submit to you this our tender for supplying five thousand (5,000) tons of steel rails to the Dominion of Canada, in accordance with the terms mentioned in your advertisement in the *Montreal Herald* dated Ottawa, 29th Sept., 1874.

"TENDER.

"We offer to supply 5,000 tons of steel rails (new) at £11 sterling per ton, delivered on the wharf, at Montreal, during the season of navigation of the year 1875, the last delivery not to be later than October, 1875.

We beg herewith to hand you an original letter received from the West Cumberland Iron and Steel Co., by which you will see that this firm have, during the past year, supplied upwards of twenty thousand (20,000) tons of steel rails to the principal railway companies of Great Britain.

"We are, dear Sir,

"Yours truly,

"COX & GREEN.

"F. BRAUN, Esq., Secretary,

"Public Works Department,

"Ottawa."

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five thousand tons of Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 0s. 0d. sterling; iron bolts and nuts at——.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

"For West Cumberland Steel and Iron Co.,

"COX & GREEN,

"13 and 15 Hospital Street,

"Montreal."

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tenders to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 5s.; iron bolts and nuts at £24 2s. 6d.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract.

"For the Aberdare Co.,

"THOS. REYNOLDS, JUN.,

"Agent, London, E.C.

"CANADA ADDRESS:—

"St. Lawrence and Ottawa Railway Co's. Office,

"Ottawa, Canada."

"MONTREAL, 14th Nov., 1874.

"DEAR SIR,—I beg to offer you five thousand (5,000) tons of flanged steel rails, to approved specification and section, at ten pounds five shillings (£10 5s.) sterling per ton, net cash, against bills of lading, delivered at Liverpool, during the summer of next year.

"I am, dear Sir,

"Yours, &c.,

"JAS. CRAWFORD.

"The above rails will be manufactured by the Mersey Iron and Steel Co.

"Hon. A. MACKENZIE,

"Commissioner of Public Works,

"Ottawa."

The tenders above set out include those of the successful parties, and those which, in our opinion, are material in order to understand the action which was finally taken by the Department. The others are not further referred to in our report. They are printed in full in the return to the House of Commons of the 6th April, 1876. We omit such portions of the correspondence, as have no bearing on the contracts now under consideration. This correspondence is also printed in full in the above mentioned return to the House of Commons.

We now proceed to take up *seriatim* the six contracts which embrace the supply of 50,000 tons of rails, numbered respectively 6, 7, 8, 9, 10 and 11, and we deal with them in this order:—

CONTRACT No. 6.

Steel Rails.

By this contract, dated 23rd December, 1874, George Thomas Clark, trading under the name and firm of Guest & Co., undertook to manufacture and deliver at Montreal 5,000 tons of steel rails, on or before the 1st of October, 1875, receiving therefor \$54 per ton; and an additional 5,000 tons on or before 1st July, 1876, receiving therefor \$55.24 per ton; and also a

proportionate quantity of fish-plates and bolts and nuts, receiving per ton for the fish-plates, the same price as for rails ; and for bolts and nuts, \$93.25.

The tender upon which the contract was awarded is set out above, and it will be seen that it contains offers for distinct quantities at different prices. The schedule hereinbefore mentioned as having been prepared by Mr. Fleming, and dated two days after the opening of the tenders, omits to state the particulars of this one as far as it relates to the terms finally accepted by the Government—namely, for delivery at Montreal. Mr. Fleming's special report of 1877 describes the contract as having been made for 10,000 tons at \$54.62. That conveys a correct idea of the pecuniary results, but it is not in accordance with the terms of the contract itself, or of tenders on which the contract was based. The tender offers 5,000 tons at \$54, and an additional lot of 5,000 tons at \$55.24. The proposal in this shape would, in a fair competition, other things being equal, secure to the party making it a sale of 5,000 tons against any other offer at a price above \$54 (for example, at \$54.10) ; but if treated, as was finally done, as an offer of 10,000 tons at \$54.62, it would let in that offer at \$54.10, and Messrs. Guest & Co. would lose the sale as against it. Under that treatment, Guest & Co., would in our opinion, have a just cause of complaint because their tender was not interpreted according to its exact terms ; or, if no lower offer than \$55.25 intervened, Messrs. Guest and Co. would, by that tender, secure a sale of the whole 10,000 tons. At all events, for reasons of their own, the Guest & Co. elected to take their chances on the offer in the shape in which it was sent, and we can see no good reason why it should be treated as a tender for 10,000 tons at \$54.62, particularly as that had the effect of excluding three intervening tenderers, whose prices were lower than that named for the additional lot of 5,000 tons, which Guest & Co. proposed to supply at \$55.24, and which was allotted to them. These intervening offers were as follows :—

The Aberdare Co.	\$54 75
Rice, Lewis & Son	55 00
John Fraser.....	55 17

At the time of opening the tenders and awarding the contract, Mr. Thomas Reynolds, engineer, representing the Aberdare Company and the Ebbw Vale Company, as well as Mr. H. A. V. Post, of the firm of Perkins, Livingston, Post & Co., representing Messrs. Guest & Co., were at Ottawa. There is no evidence that the Aberdare Company was not a satisfactory

firm to deal with, or that they refused to carry out their offer. The contract was awarded by the following letter :—

“OTTAWA, 1st Dec., 1874.

“SIR,—The tender made on the 14th ultimo by Messrs. Perkins, Livingston, Post & Co., on behalf of Messrs. Guest & Co., Dowlais, Wales, for the supply of 10,000 tons of steel rails, with the bolts and nuts required for that quantity of rails, having been accepted, I am directed to send you the enclosed draft articles of agreement (in triplicate), and to request you to be kind enough to have them executed by Messrs. Guest & Co., and to then return them to me.

“I have, &c.,

“F. BRAUN,

“Secretary.”

“H. A. V. POST, Esq.,

“Russell House, Ottawa.”

The result of the decision here communicated is to pay a price, for the second lot of 5,000 tons covered by this contract, higher than that asked by other tenderers. On the item of rails the extra price amounts to \$2,450, but this sum was not entirely lost. A portion of it was saved because Guest & Co. had named for bolts and nuts a lower price than that proposed by the Aberdare Co., the firm who had made the lowest offer of the three excluded tenderers. The offer of the first lot of 5,000 tons in the tender of Guest & Co. was \$54, and was available without accepting the higher-priced additional lot. It could have been accepted together with the 5,000 tons offered by the Aberdare Co. at \$54.75; this would have made the average for the 10,000 tons of rails, \$54.37½ instead of \$54.62.

In order to understand the transaction which took place, it is not, necessary to do more than compare the offer of the Aberdare Co. for 5,000 tons, with that of Guest & Co. for the additional or second lot of 5,000 tons, inasmuch as the lower-priced lot of 5,000 tons would be accepted irrespective of these.

Comparative Statement.

Guest and Co.,—

5,000 tons rails @ \$55.54.....	\$276,200 00
Half the quantity delivered under contract 6 with	} 192 tons fish-plates, \$55.24.. 10,606 08
10,000 tons of rails, say :—	
	42 “ bolts & nuts @ \$93.29 3,918 18

Total \$290,724 26

Aberdare Co:—

5,000 tons rails @ \$54.75.....	\$273,750 00
192 “ fish-plates @ \$54.75.....	10,512 00
42 “ bolts and nuts @ \$117.41	4,931 22

Total \$289,193 22

Loss..... \$1,501 04

Upon the evidence we do not discover any grounds for this preference of Messrs. Guest & Co., and we conclude that in obtaining this contract, the contractors got an undue advantage, and that at the time of awarding it, the Department had an opportunity of procuring the articles provided by this contract at a lower price than was given. The evidence does not disclose the reason for paying the higher price.

The contract has been fulfilled, and the following amounts were paid on account of it:—

30th June, 1875.....	\$281,524 57
30th June, 1876	294,887 02

Total..... \$576,411 59

By a subsequent arrangement some of the rails covered by this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT NO. 7.

Steel Rails.

By this contract, dated 9th of February, 1875, the Ebbw Vale Steel, Iron & Coal Company, undertook to make and deliver at Montreal, during the season of navigation in 1875, 5,000 tons of steel rails, with the proportionate quantity of fish-plates, bolts and nuts, receiving therefor per ton for rails and fish-plates £11 stg., equal to \$53.53, and for bolts and nuts £24 2s. 6d., equal to \$117.41. The report of the Chief Engineer, dated 19th of November, 1874, on the tenders received, as well as the tenders themselves, both hereinbefore set out, show that the tender of this firm was one of the two lowest received, and was at the rates above specified. The acceptance of the tender was communicated by the following letter to Mr. Reynolds who was the agent of the contractors:

"OTTAWA, 3rd December, 1874.

"SIR,—The tender of the Ebbw Vale Steel, Iron and Coal Company (Limited) enclosed in your letter of the 16th ult., for the supply of five thousand tons steel rails, &c., having been accepted, I am directed to request that the accompanying contract in triplicate be forwarded to the company for execution, and that it be returned here for completion.

"I have, &c.,

"F. BRAUN,

"Secretary.

"THOMAS REYNOLDS, Esq.,

"Engineer,

"Ottawa."

We find that in obtaining this contract the contractors got no undue advantage, and that in awarding it the Department purchased the material covered by it at the lowest available offer.

It has been fulfilled, and the following payments were made on account of it:—

To 30th June, 1876..... \$284,117 21

Subsequently some of the material included in this contract was transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT No. 8.

Steel Rails.

By this contract, dated 14th January, 1875, the Mersey Steel and Iron Company undertook to make and deliver at Montreal, half before the 1st October, 1875, and the balance before the 1st July, 1876, 20,000 tons of steel rails, with the proportionate quantity of fish-plates, receiving therefor £11 3s. sterling, equal to \$54.26 per ton.

The Mersey Steel & Iron Company did not tender for so large a quantity as is provided for in this contract. Their tender was for from 5,000 to 10,000 tons at the price above named, and also for bolts and nuts at \$101. It was signed in their name by Messrs. Cooper, Fairman & Co., who described themselves as their agents. This firm of Cooper, Fairman & Co. were also tenderers in their own names for from 5,000 to 10,000 tons, Mersey or Bolton brands, the rails to be delivered at Liverpool at £10 10s. sterling, with bolts and nuts at £19 10s. sterling, offering at the same time to deliver the same at Vancouver Island at the following rates:—

Rails at..... £13 5 3 sterling.

Fish-bolts at..... 22 5 3 "

Messrs. Cooper, Fairman & Co. were also tenderers for from 5,000 to 10,000 tons of the Mersey Steel and Iron Company's brand of rails, to be delivered at Duluth or Thunder Bay, at £12 6s. sterling per ton, with bolts and nuts at \$107 per ton, and accompanying this offer was one to deliver at French River at two shillings less per ton than the above prices.

The tender made by the Mersey Company reached the Department in an envelope by itself; the tender by Messrs. Cooper, Fairman & Co. in another. The following letter was written by the Secretary of the Department:—

“OTTAWA, 2nd December, 1874.

“GENTLEMEN,—The tenders you have made on behalf of ‘The Mersey Steel and Iron Company’ of Liverpool, for the supply of steel rails, &c., having been accepted, I am directed to send you the enclosed draft articles of agreement, and to request you to have the kindness to have them executed by the Company, and to then return them to me.

“I have, &c.,

“F. BRAUN,

“Secretary.”

“Messrs. COOPER, FAIRMAN & Co.,

“Agents, Montreal.”

This notification is made as if Cooper, Fairman & Co. had made more than one tender on behalf of the Mersey Steel & Iron Company, which was not the fact. In this and in many other instances, throughout the contracts concerning steel rails and bolts and nuts and transportations, it appears that an understanding existed from time to time between this firm and the Department of Public Works, beyond that which is conveyed by letters or papers on record. The tenders above set out as made by Messrs. Cooper, Fairman & Co., relate to delivery at Duluth, Thunder Bay, French River, Liverpool and Vancouver, none of them being named in the advertisement as places at which delivery would be accepted. After the tenders were received, Mr. Fleming describes the effect of some of these tenders in his schedule of the 19th November, as if it was then expected that the Department would entertain them, though no competition had been invited except for delivery at Montreal. There was, in fact, not more than one tender in the name of the Mersey Company. The other tenders were by Messrs. Cooper, Fairman & Co., in their own name, and were not for delivery at Montreal.

The proceedings which followed this notification of 2nd December, show that it was thereby intimated that not only the offer made in the name of the Mersey Co., for 10,000 tons to be delivered at Montreal, but also the offer of Cooper, Fairman & Co. for an additional 10,000 tons with a

price for delivery at Duluth and French River, was accepted, though no competition had been invited for the points thus named by Messrs. Cooper, Fairman & Co., and though Messrs. Perkins, Livingston, Post & Co. had made an offer for delivery at the same points, lower than that of Messrs. Cooper, Fairman & Co.'s tender.

Mr. Fleming's schedule of 19th November, 1874, stated the following as the result of the offers for delivery on western lakes :

Contractor.	Tons.	Thunder Bay.	Duluth.
		\$ cts.	\$ cts.
Post & Co.....	5,000	.....	58 16
do	5,000	.....	59 40
Cooper, Fairman & Co.....	10,000	59 86	.....

This gives the idea that they did not compete on deliveries at both places, but they did, and the substance of their respective offers was as follows :

Contractor.	Tons.	Thunder Bay.	Duluth.
		\$ cts.	\$ cts.
Post & Co.....	5,000	58 41	58 16
do	5,000	60 15	59 40
Cooper, Fairman & Co.....	10,000	59 60	59 60

Thus the tenders before the Department at that time showed that Post & Co. offered 10,000 tons at Duluth, or 5,000 tons at Duluth and 5,000 tons at Thunder Bay, at prices lower than those named by Messrs. Cooper, Fairman & Co.

It was decided to take 10,000 tons for delivery on the western lakes, though no competition was invited at such ports, and to award the supply of them at the higher prices of Messrs. Cooper, Fairman & Co.'s tender. A contract was prepared in the name of the Mersey Company for both lots of 10,000 each, one to be delivered at Montreal, and the other on the western lakes. The Mersey Company declined to contract for delivery on the lakes,

and retained the right to deliver the 20,000 tons at Montreal. This led to the necessity of a new contract for transportation the following year, and competition was invited for it by advertisement. Then, after the opening of the tenders, Messrs. Cooper, Fairman & Co. interfered, and, without having taken part in that competition, claimed that in consequence of the acceptance of their offer in this case, they were entitled to the contract for transportation of these rails from Montreal to the western lakes, and it was given to their nominee (see contract 20).

Mr. Trudeau testified to the loss which had been sustained in consequence of accepting the offer of Cooper, Fairman & Co. in this case, as notified by Mr. Braun as aforesaid, instead of the lower one of Messrs. Perkins, Livingston, Post & Co.

Mr. Trudeau stated that the acceptance of the lower offer of Post & Co. would have saved upon the 10,000 tons covered by their tender, \$12,400 if delivered at Duluth, and \$4,900 at Fort William.

As a fact about 5,349 tons of rails and accessories were delivered at Duluth, and about 5,477 tons at Fort William, upon which, at the rates stated by Mr. Trudeau, the loss would be over \$9,000.

A contract was prepared for execution on the basis of the two tenders above mentioned and accepted by Mr. Braun's letter of 2nd December, 1874, and it was expected to be executed by the Mersey Company.

The following two letters are the next on record between the Department and this firm concerning this contract :—

“GREY NUNS' BLOCK, 42 AND 44, FOUNDLING STREET,
“MONTREAL, Dec. 4th, 1874.

“Our Mr. Fairman leaves here for England, *via* New York, Monday afternoon; and before going we would like to know if you would accept delivery of rails west, and at what points. By knowing this we may be able to reduce the pressure on the Montreal freight market by sending a portion *via* New York, and thus get a more speedy delivery. An early reply will oblige.

“COOPER, FAIRMAN & CO.

“Honourable A. MACKENZIE,
“Ottawa.”

“OTTAWA, 5th December, 1874.

“GENTLEMEN.—With reference to your letter of the 4th inst. relative to the delivery of steel rails, I am to state that the Department is not prepared to specify the quantities to be delivered at each of the ports mentioned in the contract of the Mersey Steel & Iron Co., but that it is not intended to receive any *via* New York.

"It may, however, be decided to have some of them delivered at an English port, in which case due notice will be given in time.

"I have, &c.,

"F. BRAUN,

"Secretary.

"Messrs. COOPER, FAIRMAN & Co.,

"Montreal."

The document evidencing the present contract was not the one first prepared. That was based upon the acceptance of the two tenders above mentioned; it is not forthcoming, and never reached the Department after it was sent to Messrs. Cooper, Fairman & Co. with the letter of the 2nd December above mentioned. The subsequent letter of Mr. Braun above set out, and dated the 5th December, 1874, makes it clear that that contract which had been forwarded for execution included delivery of rails at ports on the western lakes.

On the 4th January, 1875, the following message reached the Department:—

"OTTAWA, January 4th, 1875.

By Telegraph from Montreal.

"Mersey Co. have signed tender delivered only at Montreal. Cannot now deliver west. Above received by cable.

"AGENTS MERSEY CO.

"Hon. A. MACKENZIE."

This communication in effect informs the Department, that the tender for delivery at western ports was not made on behalf of the Mersey Company, and that that firm had declined to adopt it. The contract which had been prepared as above mentioned for execution by the Mersey Company, and enclosed to Messrs. Cooper, Fairman & Co., on the apparent understanding that they were authorized agents for these contractors, and with the intention that it should be executed in England, including in its terms as aforesaid, delivery at ports on the western lakes, and the supply of bolts and nuts, as well as rails and fish-plates, was evidently not returned. According to the above-mentioned letter of 4th December, 1874, Mr. Fairman, of Cooper, Fairman & Co., intended to leave Montreal for England, and in his evidence before us he stated that he was in England, and heard from the President of the Company that they would not execute the contract as sent to them; but he knew of no authority from the Government which permitted a new one to be executed in a different shape. A contract different in substance from that which was sent to Messrs. Cooper, Fairman & Co., on the 2nd December, was executed in England by the Mersey

Company, and is the one now under consideration. By what authority the change was made does not appear. When the substituted document reached the Department, Mr. Fissiault discovered that it was different from that which had been forwarded, and applied to Mr. Fleming on the subject. The following is a memorandum which at the time he made and attached to the contract :—

“REMARKS ON CONTRACT NO. 4,538, OF THE 14TH JANUARY, 1875, WITH THE MERSEY STEEL AND
“IRON COMPANY.

“In the original draft prepared by me, there was a price for the delivery of rails at Duluth, and one for delivery at French River, also a price for iron bolts and nuts for each delivery.

“The only price (£11 3s.) in this contract received this day, is for rails delivered at Montreal—no mention of delivering any portion at Duluth nor at French River.

“The bolts and nuts are also omitted.

“Mr. Fleming, whom I have consulted on this says, it makes *no difference*.

“H. A. FISSIAULT.

“Feby 15th, 1875.”

The italics are Mr. Fissiault's.

The tenders which had been made in the name of the Mersey Company by Messrs. Cooper, Fairman & Co., as their agents, and by this firm in their own name, included bolts and nuts. The contract returned from England was without them. Mr. Fairman was a witness before us, and on this point said that he had inserted the item “bolts and nuts” in the tender made in the name of the Mersey Company, without any authority from them. In March, 1875, the fact that this item had been in these tenders was made a ground for the Department awarding the contract to Messrs. Cooper, Fairman & Co. for bolts and nuts at the price given in this tender, and without competition, although several others of the competing tenderers had on a former occasion in November, 1874, made offers at much lower prices for the same articles. (See contract 30.)

We find that a tender made by Messrs. Cooper, Fairman & Co in their own name, for delivery at points other than those at which competition had been invited, was accepted, and that its terms were included in a proposed contract with the Mersey Company for 20,000 tons of rails; that the Mersey Company refused to comply with these terms, and elected to execute a contract for the rails alone, without the accessories named in the tender on which the contract was based; that the action of the Department throughout the negotiations with Cooper, Fairman & Co. concerning matters connected with this contract, was calculated to give, and did give that firm

an undue advantage over other competitors in subsequent transactions; that in obtaining this contract in its final shape, the contractors—the Mersey Steel & Iron Co.—got no undue advantage, and that in awarding it the Department purchased the material covered by it at the lowest available offer.

The contract was fulfilled, and the following sums have been paid on it :—

To 30th June, 1875.....	\$323,944 99
“ 1876.....	721,738 66
“ 1877.....	83,053 70
	<hr/>
	\$1,128,737 35

By a subsequent arrangement, some of the rails included in this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACTS NOS. 9 AND 10.

Steel Rails.

This contract, dated 6th April, 1875, is the result of two distinct bargains between the contractors and the Government. The first is concerning 5,000 tons of rails, &c., and was numbered 9; the second was for an additional lot of 5,000 tons, and the contract, as executed, embodied the terms upon which both lots were purchased. It is referred to in the books of the Department as contracts 9 and 10. By it the West Cumberland Iron and Steel Co. (Limited), undertook to make and deliver 10,000 tons of steel rails with the proportionate quantity of fish-plates, bolts and nuts, of which 5,000 tons of rails, etc., were to be delivered in Montreal at £11 sterling, equal to \$53.53 per ton for rails and plates, and £20 sterling, equal to \$97.33 per ton for bolts and nuts, and the residue of 5,000 tons of rails, etc., free on board in England, at £10 sterling, equal to \$48.67 per ton, for rails and plates, and £19 sterling, equal to \$92.48 per ton, for bolts and nuts. The first arrangement was the acceptance of the tender sent in by the contractors in the November competition. It was one of the two lowest, and named £11 sterling as the price for rails and fish-plates, but omitted to give a price for bolts and nuts. This was afterwards fixed by correspondence. After the decision to accept the tender, the following correspondence took place :—

"OTTAWA, 20th November, 1874.

"Telegram to Messrs. Cox & Green, 13 Hospital Street, Montreal.

"Tender to supply five thousand tons of steel rails accepted. Contract, based on printed specification issued by this Department dated October 3rd, will be made with your principals.

"T. TRUDEAU,

"Deputy Minister of Public Works."

"13 AND 15 HOSPITAL STREET,

"MONTREAL, 20th November, 1874.

"DEAR SIR,—We have the honour to acknowledge your telegram of this day: 'Tender to supply five thousand tons of steel rails accepted. Contract, based on printed specification issued by this Department, dated October 3rd, will be made with your principals.'

"We presume you are kindly sending us copies of the specification you mention, on receipt of which we shall have the matter put into proper shape.

"Awaiting your valued favours,

"We are, dear Sir,

"Your obedient servants,

"COX & GREEN.

"T. TRUDEAU, Esq.,

"Deputy Commissioner Public Works,

"Ottawa."

"OTTAWA, 25th November, 1874.

"GENTLEMEN,—As in the tender you made on the 10th inst., in behalf of the West Cumberland Iron and Steel Co. (Limited), for the supply of 5,000 tons of steel rails, you omitted to state the price the Company would charge for furnishing the bolts and nuts required for that quantity of rails. I am directed to ask you to be good enough to now give that information.

"I have, &c.,

"F. BRAUN,

"Secretary.

"Messrs. Cox & Green,

"Hospital Street, Montreal."

"OTTAWA, 5th December, 1874.

"GENTLEMEN,—The tender of the West Cumberland Iron and Steel Company (Limited) for the supply of steel rails having been accepted, I have to send to you herewith for execution by said Company the draft of contract for same in triplicate, which you will be pleased to return here as early as convenient for completion.

"I have, &c.,

"F. BRAUN,

"Secretary.

"Messrs. Cox & Green,

"Montreal."

Shortly after awarding this contract an offer was made on the part of the Government to increase the quantity to be supplied by these tenderers, which offer was declined. Subsequently, however, on the 18th December, 1874, Messrs. Cox & Green made an offer to supply 5,000 tons more at the same price as mentioned in their original tender, concerning which the following correspondence took place:—

"13 AND 15 HOSPITAL STREET,

"MONTREAL, December 18th, 1874.

"DEAR SIR,—We are to-day in receipt of a cable communication from West Cumberland Iron and Steel Company (Limited), informing us that taking into consideration the favourable terms of payment, they are prepared to increase the quantity of steel rails which they are contracting to deliver from 5,000 tons [as the quantity now stands to (10,000) ten thousand tons. We would remind you that our price is the lowest of any, viz.: (£11 0s. 0d.) eleven pounds sterling per ton delivered in Montreal. We would now, therefore, respectfully request that you would bring the proposition to the notice of the Minister of Public Works, calling his particular attention to the very low price of the rails.

"Soliciting the favour of a reply,

"We are, dear Sir,

"Your obedient servants,

"COX & GREEN.

"F. BRAUN, Esq., Secretary,

"Public Works Department,

"Ottawa."

"MONTREAL TELEGRAPH CO.,

"OTTAWA, December 21st, 1874.

"By Telegraph from Montreal to T. Trudeau, Public Works.

"See our letter 18th December to Mr. Braun, offering five thousand tons more rails if wanted; reply quick, as a railroad is in treaty.

"COX & GREEN."

"OTTAWA, 22nd December, 1874.

"Telegram to Cox & Green, Montreal.

"No further steel rails wanted. Thanks.

"F. BRAUN,

"Secretary."

"OTTAWA, 5th January, 1875.

"GENTLEMEN—The Minister of Public Works having reconsidered your offer on behalf of the West Cumberland Iron and Steel Company (Limited) of Workington, to supply 5,000 tons of steel rails in addition to the quantity stipulated in their contract at £10 (ten pounds) sterling per ton, and on the terms and conditions of their said contract f. o. b. at Workington, I am to inform you that said offer is accepted, and to request you will advise the Company accordingly.

"I have, &c,

"F. BRAUN,

"Secretary.

"Messrs. COX & GREEN,

"Montreal."

Accompanying the original tender of this Company, a letter dated 23rd October, 1874, from the Secretary to Messrs. Cox & Green, the agents at Montreal, was sent to the Department. This letter named £10 sterling as a price at Workington, or £11 sterling at Montreal; and it seems to have been considered that their offer of December 18th, 1874, might be treated as still continuing this alternative. Mr. Mackenzie, in his evidence, stated that about the time of accepting this last offer it was considered expedient to procure some rails for delivery in Vancouver, and the fact that the terms of the new offer by these contractors on the 18th December was accepted on the condition that the delivery should not be made in Montreal as proposed by their agents, Messrs. Cox & Green, but at Workington, in England, as mentioned in Mr. Braun's letter of the 15th of January, 1875, indicates, that it was at that time intended, that this second purchase from the West Cumberland Co., should go to Vancouver. The following letter was subsequently written by the Secretary of the Department:—

"OTTAWA, 4th March, 1875.

"GENTLEMEN,—A new contract with the West Cumberland Iron and Steel Co. being required for the supply of 5,000 tons steel rails, &c., it has been determined to amalgamate the same with the contract executed by the Company on the 2nd February instant, for the first 5,000 tons.

"The accompanying draft has been prepared accordingly and is endorsed for execution.

"You will remark that the price per ton for bolts and nuts does not cover duty.

"The first contract in triplicate is returned herewith.

"I have, &c.

F. BRAUN,

"Secretary.

"Messrs. COX & GREEN.

"Montreal."

The contract was executed. The delivery of 5,000 tons to be at Montreal, and of 5,000 at Workington. Subsequently the Department proposed to change these terms, as shown by the following correspondence:—

"OTTAWA, April 20th, 1875."

"Would West Cumberland Company, deliver the whole ten thousand tons rails at Montreal at eleven, and bolts and nuts at twenty pounds, sterling.

F. BRAUN,

"Secretary.

"COX & GREEN,

"Montreal."

"13 & 15, HOSPITAL STREET,

MONTREAL, 20th April, 1875.

"DEAR SIR,—We have your telegram of to-day and copy enclosed.

"The first five thousand tons have already or are about being shipped. We have no doubt the Company could send the other five thousand also, and we dare say can arrange to deliver

them to you here. Adding one pound sterling to the price you have agreed to pay them delivered in England, we will lay the matter before them by mail leaving here next Friday, the 23rd inst, and when their reply reaches us we shall have the honour of communicating it to you.

"We are your obedient servants,

COX & GREEN.

"F. BRAUN, Esq., Secretary,

"Public Works Department,

"Ottawa."

The evidence shows that in obtaining this contract (numbered 9 and 10) the contractors obtained no undue advantage, and in awarding it the Department bought the material covered by it at a price as low as that for which it could have been then obtained from any other source.

It was finally arranged that the delivery should be made in Canada, and the contract was fulfilled. The following sums were paid on the contract:—

To 30th June, 1875.....	\$230,645 14.
To 30th June, 1876.....	147,284 99.
To 30th June, 1877.....	186,145 73.
Total.....	<hr/> \$564,075 86.

By a subsequent arrangement some of the rails included in this contract were transferred to the Intercolonial Railway, and the account of the Pacific Railway was credited accordingly.

CONTRACT NO. 11.

Steel Rails.

By this contract, dated 9th February, 1875, a firm, composed of persons whose names are not given, using the style and firm of Naylor, Benzon & Co., undertook to supply five thousand tons of rails, with the proportionate quantity of fish-plates, free on board, at Liverpool, receiving therefor £10 10s. per ton, deliverable as follows: 2,500 to 3,000 tons in March or April, 1875; the remainder in May, 1875.

This contract was the result of offers by Messrs. Cooper, Fairman & Co.' without competition. The tenders which reached the Department in answer to the advertisement issued on this occasion, and which had invited offers for delivery only at Montreal, were accompanied by two for delivery at Liverpool, one from James Crawford at £10 5s. ster-

ling per ton, and one from Messrs. Cooper, Fairman & Co. at £10 10s. The latter tender contained also the only offer for delivery at Vancouver, which was at £13 5s. 3d. sterling.

Before the time named for receipt of tenders, the following correspondence passed between the Department and a Mr. Justice :—

“ PHILADELPHIA, 23rd October, 1874.

“ DEAR SIR,—In making tenders for ‘steel rails,’ you require deliveries to be made at Montreal.

“ I write to ascertain if tenders would be received for rails to be delivered at Liverpool, and all matters of freight and insurance would then be in your hands. This course would bring out greater competition in way of bids, thus reducing prices.

“ Yours truly,

“ PHILIP S. JUSTICE.

“ F. BRAUN, Esq., Secretary,

“ Public Works Department,

“ Ottawa, Canada.”

“ OTTAWA, 27th October, 1874.

“ SIR,—In reply to the enquiry made in your communication of the 23rd instant as to whether the Department would accept tenders for steel rails delivered at Liverpool, England, &c., I beg to inform you that no such tenders would be accepted. In addition to the place mentioned in the specification for delivery, the Department would have no objection to tenders for delivery on Georgian Bay, Lake Huron, or Duluth and Thunder Bay, Lake Superior.

“ I have, &c.,

“ F. BRAUN,

“ Secretary.

“ PHILIP S. JUSTICE, Esq.,

“ No. 14 North Fifth Street,

Philadelphia, Pa., U.S.

Although the Department had requested no competition for delivery in England for Vancouver, nevertheless, after the opening of the tenders, Mr. Fleming, on the 19th November, 1874, thought it proper, in his report, to submit the substance of the one for Vancouver, made by Messrs. Cooper, Fairman & Co.

After consideration of the different tenders, the notification of the acceptance of some of them took place at the dates and for the quantities below mentioned :—

Nov. 20th, to Cox & Green, 5,000 tons at.....	\$53 53
Dec. 1st, H. A. F. Post, 10,000 tons (at average)..	54 62
Dec. 2nd, Cooper, Fairman & Co., 20,000 tons at.	54 26
Dec 4th, Thos. Reynolds, jun., 5,000 tons at.....	53 53

This provided for 40,000 tons. The day following the last of these notices, the following letter was written by the Secretary :—

" OTTAWA, 5th December, 1874.

" GENTLEMEN,—With reference to your letter of the 4th inst., relative to the delivery of steel rails, I am to state that the Department is not prepared to specify the quantities to be delivered at each of the ports mentioned in the contract of the Mersey Steel and Iron Company, but that it is not intended to receive any *viâ* New York.

" It may, however, be decided to have some of them delivered at an English port, in which case due notice will be given in time.

" I have, &c.,

" F. BRAUN,

" Secretary.

" MESSRS. COOPER, FAIRMAN & Co.,

" Montreal."

This is the first official record of an intention by the Department to purchase rails for delivery at an English port. We cannot, from its language, understand whether it refers to the tender which had been put in as afore-said by Messrs. Cooper, Fairman & Co. in company with the regular tenders for delivery at Montreal, and which mentions the same price as that which was subsequently given under this contract, or to the prospect of a subsequent negotiation by competition or otherwise. No one from the Department has been able in his evidence to state the grounds for the decision to purchase in this case beyond what the records exhibit. We have attempted to trace through these records the steps taken, or information obtained, by the Department concerning rails to be delivered in England or in Vancouver. On the 9th December, 1874, the Secretary wrote the following letter :—

" OTTAWA, 9th December, 1874.

" GENTLEMEN,—In reply to your communication of the 30th ult., asking if any more steel rails would be required by the Government during the coming year in addition to those lately purchased, I beg to inform you that should any more be required, tenders will be called for as previously done.

" I have, &c.,

" F. BRAUN,

" Secretary.

" CHAMPLIN & GILLET,

" P. O. Box 3012, New York, U.S."

An offer was made by Cox & Green, of Montreal, the agents for the West Cumberland Company, dated the 18th December, 1874, to supply 5,000 tons beyond the quantity covered by their original tender. The following correspondence will show the substance of that offer and how it was at first disposed of :—

"13 AND 15 HOSPITAL STREET,

"MONTREAL, December 18th, 1874.

"DEAR SIR,—We are to-day in receipt of a cable communication from West Cumberland Iron and Steel Company (Limited), informing us that taking into consideration the favourable terms of payment, they are prepared to increase the quantity of steel rails which they are contracting to deliver from (5,000) five thousand tons, as the quantity now stands, to (10,000) ten thousand tons. We would remind you that our price is the lowest of any, viz.: (£11.00) eleven pounds sterling per ton, delivered in Montreal. We would now, therefore, respectfully request that you would bring the proposition to the notice of the Minister of Public Works, calling his particular attention to the very low price of the rails.

"Soliciting the favour of a reply,

"We are, dear Sir,

"Your obedient servants,

"COX & GREEN.

"F. BRAUN, Esq., Secretary,

"Public Works Department,

"Ottawa."

"MONTREAL TELEGRAPH CO.,

"OTTAWA, December 21st, 1874.

"By Telegraph from Montreal to T. Trudeau, Public Works.

"See our letter 18th December to Mr. Braun, offering five thousand tons more rails if wanted; reply quickly, as a railroad is in treaty.

"COX & GREEN."

"OTTAWA, 22nd December, 1874.

"Telegram to Cox & Green, Montreal.

"No further steel rails wanted. Thanks.

"F. BRAUN,

"Secretary."

This refusal seems to us not to be in accord with the intention of the Department suggested to Messrs. Cooper, Fairman & Co., on the 5th December, at which time Mr. Braun, in the letter above mentioned, had used this language to them:—

"It may, however, be decided to have some of them delivered at an English port."

For, if rails were required at Vancouver, it was hardly expedient to refuse 5,000 tons at the price named by the West Cumberland Co., the lowest of all tenderers, especially as it was understood that their offer was meant to give the alternative of £11 sterling at Montreal, or £10 sterling at an English port.

After this refusal on the 22nd December, 1874, of the offer made on behalf of the West Cumberland Co., the next recorded correspondence on the subject of a further supply of rails is the following, which opens a fortnight

after the letter of Mr. Braun, informing Messrs. Cooper, Fairman & Co. that some might be taken at an English port:—

“MONTREAL, 29th December, 1874.

“DEAR SIR,—I have just received a cable message through Mr. Fairman, on behalf of the makers, offering 6,400 best Bessemer steel rails—additional at £10 10s. 0d. f. o. b. Liverpool—subject to reply upon Thursday. Should you be able to take this extra lot, I will secure them at once, as the prices will probably advance after New Year. The writer will wait upon you in the morning at the station with reference to this offer.

“Your obedient servant,

“JAMES COOPER.

Hon. A. MACKENZIE.

Between this date and the next letter, as we judge from the contents of the latter, some one, acting for the Department, had informed the firm of Messrs. Cooper, Fairman & Co., that 10,000 tons would be required at Liverpool:—

MONTREAL, 4th January, 1875.

“DEAR SIR,—We received cable message advising that the Mersey Co. have signed tender for delivery in Montreal only. With reference to the 10,000 tons required f. o. b. Liverpool, by taking immediate action by cable, we can probably arrange it, the original tender being all for shipment here. To facilitate matters, we would be glad to have your instructions with reference to this, and the delivery at Vancouver Island. We can probably secure freight at £2 per ton, although £2 10s. has been asked. Upon receipt of your instructions, we will cable for figures and make contract for delivery on the Pacific Coast. Waiting your early rep'y,

“We remain,

“Yours respectfully,

“COOPER, FAIRMAN & CO.,

“FOR MERSEY IRON STEEL CO.

“Hon. A. MACKENZIE,

“Ottawa.”

Messrs. Cooper, Fairman & Co. here refer to *the* 10,000 tons as if it had been the subject of a previous conversation or communication, and plainly propose to enter into a contract without competition, on their own terms, not only as to rails, but as to freight.

On the next day the three following communications are recorded:—

“OTTAWA, 5th January, 1875.

“GENTLEMEN,—The Minister of Public Works having reconsidered your offer on behalf of the West Cumberland Iron and Steel Co. (Limited), of Workington, to supply 5,000 tons of steel rails in addition to the quantity stipulated in their contract, £10 (ten pounds) sterling per ton, and on the terms and conditions of their said contract f.o.b. at Workington, I am to

inform you that said offer is accepted, and to request you will advise the Company accordingly.

"I have, &c.,

"F. BRAUN,

"Secretary.

"Messrs. COX & GREEN,

"Montreal."

"OTTAWA, 5th January, 1875.

"SIR,—In reply to your communication of the 23rd ult., asking the probable destination of the rails lately purchased by the Government, in order to enable you to make offers for the carriage of the same, I beg to inform you that the place of delivery will be Montreal and Vancouver Island.

"I have, &c.,

"F. BRAUN,

"Secretary.

"JOHN G. DALE, Esq.,

"New York, U.S."

"OTTAWA, 5th January, 1875.

"SIR,—In reply to your communication of the 29th ult., offering to supply 6,400 tons of Bessemer steel rails at £10 10s. f. o. b. at Liverpool, I beg to inform you that the Department does not require any more.

"I have, &c.,

"F. BRAUN,

"Secretary.

"JAMES COOPER, Esq.,

"Montreal."

Two days after this the following acceptance of Messrs. Cooper, Fairman's proposal was telegraphed :—

"OTTAWA, January 7th, 1875.

"Telegraph to Messrs. Cooper, Fairman & Co., Montreal.

"If freight to British Columbia can be got at two pounds sterling, the Government will take five thousand tons of steel rails, shipped at any time. Delivery will be at Esquimalt Cowichan Bay or Nanaimo, at all of which places there are good facilities.

"F. BRAUN,

"Secretary."

After which the following correspondence took place :—

"MONTREAL, 13th January, 1875.

"DEAR SIR, In reply to telegram of the 7th instant, we beg to advise you that we have purchased on account of Dominion Government 5,000 tons Bessemer steel rails, at £10 10s. Od., f. o. b. Liverpool; cash against bills of lading.

"We have also contracted freights to Vancouver ports, viz.:—Esquimalt, Cowichan Bay and Nanaimo, at £2 5s. Od. sterling per ton.

"The Government assuming the responsibility of freight, &c., which is to say—to pay shippers, makers not assuming delivery to Vancouver ports.

"Should you require the track bolts for this lot we can arrange for them and include. We are advised that steel rails are now held at £11 0s. 0d. We would be glad to be favoured with the address of your Bankers in England, to whom we suppose the bills of lading will require to be presented to. Kindly confirm the contract as soon as possible to enable us to cable reply, the necessary documents to follow.

"Yours faithfully,

"COOPER, FAIRMAN & CO.

"Hon. A. MACKENZIE,

"Ottawa."

By this letter Messrs. Cooper, Fairman & Co. intimate that they expect to close the transaction, by supplying the quantity named by Mr. Braun on the 7th January, 1875, though it should cost more than had been mentioned by him as a condition on which the purchase would be effected.

Between the 14th and 18th January, 1875, inclusive, the following six communications from this firm, to the Private Secretary of the Minister, are amongst the records of the Department. There is no trace of his answers if he gave any. The attention of the Deputy Minister was called to these communications, but he was not able to say whether there had been any answer.

Mr. Trudeau testified that it was the intention in the Department, that any official letter written by the Private Secretary should be recorded, and that it was not usual in negotiations concerning Departmental transactions that correspondence should take place between tenderers or contractors and the Private Secretary.

(Confidential.)

"Copy of Cable received 13th January, Cooper, Montreal.

"Have bought Vancouver rails, cash f. o. b. here, freights arranged; obliged to pay 45 shillings, obtain differences from Government; Government must assume responsibility, freights and insurance; makers now asking eleven pounds."

This purports to be a cablegram to Mr. Cooper from his partner in England.

"MONTREAL TELEGRAPH Co.,

"OTTAWA, 14th January, 1875.

"By Telegraph from Montreal to Wm. Buckingham, Department of Public Works.

"Have cabled for positive information; believe insurance included; will answer to-morrow.

"COOPER, FAIRMAN & Co.

" MONTREAL TELEGRAPH Co.,

" OTTAWA, 14th January, 1875.

" *By Telegraph from Montreal to Wm. Buckingham, Public Works Department.*

" Government have to pay freights at rates averaged 45 shillings to Vancouver ports; the makers not assuming delivery beyond Liverpool. I cabled to get freight at 40 shillings; after much labor succeeded in getting delivery at 45 shillings, being better than allowing rails to be withdrawn. Rails now worth £11 0s. Cd., assuming difference means accepting rates arranged for, namely, 45 shillings per ton.

" JAMES COOPER."

" MONTREAL, 15th January, 1875.

" *Wm. Buckingham, Esq., Ottawa:*

" DEAR SIR,—I am in receipt of your telegram in reply to cable message received to-day. The extra five shillings added was for insurance, which was omitted in quotations for delivery at Vancouver ports. I have cabled again this evening, and will likely have a final reply to-morrow afternoon, which I trust will be satisfactory to you.

" I remain, yours respectfully,

" JAMES COOPER.

" MONTREAL TELEGRAPH Co.,

" OTTAWA, 15th January, 1875.

" *By Telegraph from Montreal to Wm. Buckingham, Public Works.*

" Cable reply received says freight and insurance, 50 shillings; impossible to get less.

" JAMES COOPER."

" OTTAWA, 18th January, 1875.

" *By Telegraph from Montreal to W. Buckingham, Public Works.*

" Accept your offer made by telegraph on the seventh. Rails ten pounds ten shillings (£10 10s.); freight forty shillings, insurance not included.

" JAMES COOPER."

" MONTREAL, 18th January, 1875.

" DEAR SIR,—We are in receipt of a cable message to-day which enables us to accept your offer of 7th January for 5,000 tons of Bessemer steel rails at £10 10s., f. o. b., Liverpool, terms cash on delivery and freight to Vancouver ports, viz.: Esquimalt, Cowichan and Nanaimo, at forty shillings per ton—insurance an open question.

" Makers of rails only delivering f. o. b., Liverpool.

" Please confirm the above at your earliest convenience to enable us to confirm sale in England by cable.

" We remain, yours faithfully,

" COOPER, FAIRMAN & Co.

" P.S.—We would be glad if you can favour us with the address of your Bankers, to whom we are to present bills of lading of delivery.

" Wm. BUCKINGHAM, Esq.,

" Ottawa."

On the 21st of that month the transaction was closed by the following official communication :—

" OTTAWA, 21st January, 1875.

GENTLEMEN,—In reply to your several communications on behalf of Messrs. Naylor, Benzon & Co., I am to state that the Government accept their offer to supply 5,000 tons of steel rails at £10 10s. 0d. sterling per ton f. o. b. at Liverpool, and allows £2 0s. 0d. per ton for freight to the Vancouver ports.

" The Agent-General of the Dominion, E. Jenkins, Esq., M.P., will see to the insurance.

" Messrs. Morton, Rose & Co., are the Financial Agents of the Government in London.

" I have, &c.,

" F. BRAUN,

" Secretary.

" Messrs. COOPER, FAIRMAN & Co.,

" Montreal."

The evidence shows that there was no such rise in the market price of rails as that which, in Mr. Cooper's letter to Mr. Buckingham of the 14th January, is stated to have taken place, and no such advance as in Mr. Cooper's letter of the 29th December, 1874, to Mr. Mackenzie, was mentioned as probable after New Year. Mr. Reynolds' testimony, as well as Mr. Sandberg's diagram and the periodicals before mentioned as authorities, namely, *Iron* and *The Iron and Coal Trades Review*, all indicate that from the latter end of November until after all these transactions were closed there was no general rise in the price of rails, but, on the contrary, if there was any movement it was downwards. It is not, however, inconsistent with such evidence that individual makers may have asked £11 sterling. In fact, periodicals or other authorities of that nature purport to do no more than to give the general state of the market. The tenders that were sent, in answer to the advertisement in this case, ranged from £11 to £17 sterling for delivery at Montreal, equivalent to £10 to £16 sterling at English ports, and if, at the time this purchase was being closed, *i. e.*, in January, 1875, any maker asked £11, or any other price, at an English port, that fact gave no indication of the lowest price at which a Government could purchase rails.

On the 4th January, 1875, there were two offers before the Department for rails to be delivered in England, both made spontaneously: one from Cox & Green, made on the 18th December, 1874, at £10 sterling, which we say, was still before the Department, because, though it had been refused by telegram on the 22nd December, it was at this time, the 4th January, 1875, treated as available, and, in fact, accepted. Another was from Cooper, Fairman & Co., made the 29th December, 1874, at £10 10s. sterling.

It was on this 4th of January, also before the Department, on its records, that Mr. Justice had desired to tender for delivery at Liverpool, and had been informed that—"No such tenders would be accepted:" that Mr. Crawford had offered to take, for delivery at Liverpool, £10 5s. sterling per ton; that there were signs of a weakening in the market, for makers were then inclined to take less than they would accept on a previous occasion. That the market had been firmer is perfectly clear, for Mr. Mackenzie testified that, after the opening of the tenders, and before this spontaneous offer of 18th December, the West Cumberland Co. had declined to furnish a further quantity at \$53.53; and there is other evidence to show that the Ebbw Vale Co. had, soon after the opening of the tenders, declined to accept that price for an additional supply. Therefore this offer, coming spontaneously from Cox & Green to supply 5,000 tons at a price which they had previously refused, was an intimation that the market was weakening. With a knowledge, on the 4th January, 1875, of these facts, the Department took action as follows.

On 5th January, 1875, Mr. Braun wrote Cox & Green accepting their offer for 5,000 tons at £10 sterling.

On 5th January, 1875, Mr. Braun wrote Mr. Cooper, of Cooper, Fairman & Co., declining to take any more rails.

On 7th January, 1875, Mr. Braun telegraphed Messrs. Cooper, Fairman & Co. that if freight could be got at £2 sterling the Government would take 5,000 tons shipped at any time.

And after some intermediate attempts of this firm to get a higher price for transportation, the purchase was concluded on the terms named in Mr. Braun's telegram of 7th January, 1875.

Mr. Mackenzie was asked whether, before deciding upon awarding this contract to Cooper, Fairman & Co., the circumstances of these applications from Mr. Justice and Mr. Crawford were taken into consideration, or whether any attention was given to the fact that two days before that he had been offered voluntarily, by the West Cumberland Co., 5,000 tons at a price ten shillings lower than that named by Messrs. Cooper, Fairman & Co. His answer was that he had no doubt they were all considered; that the fact that there was a decision in the case implied consideration; but he had no recollection of any discussion respecting the matter, and upon being asked why it was not worth while to ask for the competition of Crawford or of the West Cumberland Co., he said he knew of no reasons whatever, except

what were in the public documents in the office. After the acceptance of this last lot from Cooper, Fairman & Co., the one of 5,000 which had been previously bargained for with the West Cumberland Co. to be delivered at an English port was arranged to be delivered at Montreal instead, so that this purchase from Cooper, Fairman & Co. had indirectly the effect of increasing the quantity to be delivered at Montreal from 40,000 to 45,000 tons.

We have not been able to get any information upon the question how the Minister was induced, without competition, to concede to Messrs. Cooper, Fairman & Co. a price 10s. sterling higher than that which the West Cumberland were, two days earlier, willing to take.

Mr. Mackenzie stated that in awarding contracts, his "decision was invariably not only in concert with, but in acquiescence of the views of the officers of the Department," in consequence of which statement Mr. Trudeau, who had been the Deputy Minister at the time of this contract, was re-called, in order to ascertain how far the circumstances above alluded to were considered before awarding this contract to Cooper, Fairman & Co.

Mr. Trudeau testified that it was not a matter of doubt with him as to whether his judgment had been asked concerning the rail contracts, and he stated that the Minister had himself decided.

Mr. Fleming, as a witness, said he wished us to understand that from first to last he took no part in awarding contracts. We have, therefore, been unable to learn the reasons which led to £10 10s. being given to Messrs. Cooper, Fairman & Co. under the circumstances above stated.

The bargain was closed by a formal contract with Messrs. Naylor, Benzon & Co.

The evidence leads us to conclude :

That in this case the contractors got an undue advantage, namely, a price higher than was necessary to be paid in the state of the market at that time, and higher than was then being paid to other manufacturers—such price being conceded without competition :

That the action of the Department concerning rails to be delivered at Liverpool had the effect of silencing competition and of giving to Messrs. Cooper, Fairman & Co. an undue advantage over other dealers.

The contract has been fulfilled; the amount paid on it being \$265,052 36.

CONTRACT No. 12.

Georgian Bay Branch.

By this contract, dated the 27th of February, 1875, the Hon. Asa Belknap Foster undertook to locate and construct about eighty-five miles of railway, to be known as the Georgian Bay Branch, from the mouth of French River to a point in the centre of four townships, lettered A, B, C, D, on a map attached to said contract, according to specifications, and within a time mentioned in said contract; which railway, on its completion, was to be the property of the contractor, and to be worked for his advantage under certain specified conditions, he receiving therefor ten thousand dollars per mile together with interest at four per cent on \$7,400 for each mile of the railway, this interest to be paid for a period of twenty-five years from its completion, as well as the proceeds of 20,000 acres of land for each mile thereof in the manner in the said contract set out. This contract is printed (No. 44) in the Sessional Papers of 1875.

A return to the House of Commons dated 5th March, 1875, shows the tenders for the construction of the Georgian Bay Branch, with Orders in Council, correspondence and papers relating thereto.

A return to the House of Commons, dated 28th of February, 1877, shows reports, statements, correspondence and other papers subsequent to the execution of the contract concerning work done under it; the failure to perform it, and Orders in Council concerning the cancellation of said contract, and other matters. On the 23rd of April, 1877, the Select Standing Committee on Public Accounts presented to the House of Commons their fourth report, which was evidence taken (not under oath) in reference to the expenditure for work performed under this contract, together with several documents.

An advertisement of the 6th of November, 1874, invited tenders for the construction of this branch, stating that, amongst other things, such information as the Government possessed concerning the country through which the line passed, might be obtained at the Department. The substance of the tenders, and the action taken upon them, appear by the following:—

“DEPARTMENT OF PUBLIC WORKS,

“OTTAWA, January, 1875.

“*Memorandum.*

“The undersigned reports that tenders have been invited for the Georgian Bay Branch of the Canada Pacific Railway in two forms as follows:—

"Form No. 1.—To include the delivery of the railway completed to Government.

"Form No. 2.—To include the construction of the Railway, and its working after completion upon certain regulations as to accomodation for connecting railway lines and otherwise to be established by Government. The road, subject to such regulations, to remain the property of the contractors.

"That said tenders are all based on the following conditions as to remuneration:

"1st.—The payment, as per cap. 14, Vic. 37, sec. 8, sub-sec. 3, of a sum of \$10,000 per mile.

"2nd.—A grant of 20,000 acres of land per mile.

"3rd.—A guarantee of 4 per cent. for 25 years on a sum to be named by the parties tendering, in the event of said quantity of land per mile not being sufficient.

"That the following is a list of the tenders received:—

<i>Form No. 1.</i>	<i>Guarantee required on</i>
John Wardrop & Co., Brockville.....	\$40,000
James H. Dean, Port Perry.....	75,000
C. E. English, Toronto.....	90,000
C. E. English, Toronto.....	100,000

<i>Form No. 2.</i>	
J. D. Edgar, Ontario and Pacific Junction Railway.....	30,000
N. C. Munson, Boston.....	7,400
A. B. Foster, Waterloo.....	12,500
C. E. English, Toronto.....	110,000

"The undersigned, therefore, recommends that the offer of N. C. Munson, of Boston, be accepted, said offer appearing to be most advantageous.

"Respectfully submitted.

"A. MACKENZIE,
"Minister of Public Works."

"MEMO.—This Report was approved by a Committee of the Honourable the Privy Council on the 4th February, 1875."

"BOSTON, MASS.,
"28th January, 1875.

"SIR,—We beg to inform you that we have transferred the tender for the construction of the Georgian Bay Branch of the Canadian Pacific Railway to the Hon. A. B. Foster, who has acquired all the interest we hold in the tender sent in by us.

"Your obedient servant,
"N. C. MUNSON.

"Hon. A. MACKENZIE,
"Minister of Public Works,
"Ottawa."

" CANADA CENTRAL RAILWAY CO.,

" SECRETARY AND TREASURER'S OFFICE,

" OTTAWA, 3rd February, 1875.

" SIR,--I beg to inform you that I have acquired the interest of N. C. Munson in the Georgian Bay Branch of the Canadian Pacific Railway, and herewith enclose a transfer, and am prepared to enter into contract for same.

" Yours truly,

" A. B. FOSTER.

" Hon. A. MACKENZIE,

" Minister of Public Works,

" Ottawa."

The contract was entered into with Mr. Foster in accordance with the above-mentioned recommendation. It contained a stipulation that in no case should the gradients ascending easterly exceed 1 in 200. Subsequently it was cancelled.

An Order in Council, dated 28th of February, 1876, authorized the contract to be annulled, and the repayment to the contractor of \$85,000, which he had deposited as security, together with the fair value of works which had been performed by him so far as they were necessary to, or could be made available for, the prosecution of the work. The contract was annulled and Mr. Foster was repaid his deposit of \$85,000, together with \$41,000 towards reimbursing him for the expense on the works aforesaid.

We do not think it necessary to describe at length the correspondence and other steps which led up to this result. They are set out in the return to the House of Commons dated 26th March, 1877, before mentioned, (Sessional Papers, No. 57), but some reference to them may be useful.

On 26th October, 1874, Mr. Walter Shanly wrote to Mr. Foster and used the following language concerning this branch :—

" The levels already run, extending from the mouth of the river to the 'Nipissing Road,' a distance of about sixty miles, show beyond all question that the maximum gradients and curvature limited by the contract, namely, 26 feet per mile ascending east and 52 feet on the westwardly ascent, are not obtainable on, or near the line laid down on the contract map."

On the 17th November Mr. Fleming reported on this letter, stating that he had had the advantage of the views of Mr. Ridout and Mr. Hazlewood, and that, in his judgment, the proper course was, "for the contractor to carry on the surveys with every possible energy until a line coming within the terms of the contract be found." Mr. Fleming does not give

the language in which the views of Mr. Ridout and Mr. Hazlewood were communicated to him, and we are not able to judge how far his own strong view that the contractor by surveying with energy could find the specified grades, was a reasonable deduction from their representations. But from his letter of the 9th of February, 1877, set out in the said return, in which he said that the light gradients which he had expected were not obtained, and in which he indicated that grades had then (February, 1877) been adopted at a maximum twice as steep as those prescribed by the contract, as well as from the information contained in the said return to the House of Commons, and other evidence on the subject, we conclude that in the terms of this contract, a grade for the railway was specified as the maximum which was not obtainable, and that this was the main reason for cancelling the contract.

The general route of the line specified in this contract was not selected for engineering reasons. According to Mr. Fleming's evidence it was due to the policy of the Government. We have not enquired into the expediency of adopting the route. We have endeavoured to learn why the grades described in the contract should have been taken as practicable so positively as to make them the basis of a bargain between the contractor and the Government.

On the 6th October, 1874, the Chief Engineer submitted a report to the Minister which is hereinafter set out. In order to understand the bearing of this report it must be kept in mind that it relates to a route which included at the westerly end, about 85 miles covered by this contract, and known as the Georgian Bay Branch, and also a continuation of the same line which was subsequently agreed for, by contract 16, and is generally alluded to as the subsidized portion of the Canada Central.

"Letter from the Engineer-in-Chief to the Minister of Public Works, giving a synopsis of information respecting the country between River French and Renfrew, as well as Pembroke: from Reports of an Exploration made by Samuel Hazlewood, C.E., in the season of 1874.

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 6th October, 1874.

SIR,—In accordance with your wishes I instructed Mr. Hazlewood to walk over and examine the country between the mouth of River French and Pembroke, also along the River Bonnechere to Renfrew. The following remarks on the character of the country, its suitability for railway construction, &c., are gleaned from Mr. Hazlewood's letters to me, dated the 14th July, 5th August, and 15th September last.

"Mr. Hazlewood proceeded first to Parry Sound district, and travelled up the road leading from Lake Rousseau to Lake Nipissing; he selected the corner post between lots 158 and 159 as the initial point, and started from that place on the 1st July, on a direct course for the mouth of River French, a distance of about sixty miles. He reports the country between these points as being favourable for railway construction, no obstacles of any importance presenting themselves, except near River French, where the heaviest rock excavation will be necessary. The streams to be crossed are few and unimportant, and there is an ample supply of good stone. The land, as a general rule, is level, and as far as could be judged, much of it adapted for settlement. The timber is large and valuable. Pine, apparently of a fine quality, is to be had in abundance.

"The mouths of River French were reached on the evening of the 7th July. Here Mr. Hazlewood expected to find some Government stores, but learning that the Hudson Bay Company had lately broken up their post at this place and removed the stores to Byng Inlet he found it necessary to proceed there for a supply.

"Having procured a sufficient quantity of supplies, Mr. Hazlewood ascended the River French to Lake Nipissing, and thence by River South and Nipissing Road, returned to the camp between lots 158 and 159.

"On the 17th July he left the Nipissing Road and walked in as straight a course as possible easterly towards Pembroke. About one and a half miles from the road he crossed the River Comonda, about twenty five feet in width, flowing in a northerly direction—a short distance farther up it turns to the westward.

"For the first eight miles some rough ground was encountered, but with a little time and care Mr. Hazlewood is convinced a good line may be secured. At ten and a-half miles he crossed the River South or Namanitagong, 75 feet in width and 8 feet deep, and at sixteen and a-half miles again crossed this river, 50 feet in width. From the latter point he followed the general course of the River South to about the twenty-first mile. At seventeen and a-half miles he came upon a large deposit of gravel, the first seen between this point and River French, a total distance of seventy-seven miles. At the twenty-first mile the River South was lost sight of, but at the twenty-fourth mile a brook was crossed which he took to be one of its heads, and at the twenty-sixth and a-half mile crossed what he supposed to be the other head; this latter stream he followed to the twenty-eighth mile, where it was finally lost sight of.

"The valley of the River South from this point (twenty-eight miles) back to the eighth mile is wide, and offers no serious obstructions to the location of an easy line through it.

"About the twenty-ninth mile he reached the watershed. Here the aspect of the country changes a little; the ridges were less elevated, and his track crossed them at an angle instead of running with them as heretofore. At the thirtieth mile he crossed a brook running north-easterly, and a mile further on passed a lake, having its outlet in the same direction. At the thirty-fifth mile he reached Creek Nipissing, an important lumbering stream; at the point of crossing it is fifty feet wide. All the streams from the thirtieth mile flow into this creek. Mr. Hazlewood said he would anticipate no difficulty in getting from the valley of the River South to the valley of Creek Nipissing, the watershed between them being quite low.

"From the Creek Nipissing to the River Petewawa, a distance of eleven miles, the country is somewhat broken, but from appearances there is nothing to prevent a good line being

found through it. The Petewawa may be crossed at either end of Lake Burnt; one span of 100 feet will be sufficient, and the foundations on both sides will be rock.

"Speaking generally of the country walked over between River French and Lake Burnt, Mr. Hazlewood remarks that he feels quite safe in stating that a railway could be located on a very direct course between these points; in fact that the departure from a straight line would probably not increase the distance more than five per cent. He reports a large quantity of good land met with, covered generally with a fine growth of timber, consisting of pine, maple, beech, elm, birch hemlock, cedar, with some spruce and tamarac.

"He arrived at the River Petewawa on the evening of the 25th July; and, his provisions falling short, he considered it advisable to proceed direct to Pembroke by the quickest route.

"Having procured supplies, Mr. Hazlewood continued his examination. The following is a description of the country between Lake Burnt and Renfrew, *viâ* the River Bonnechere:—

"Running easterly through the valley of Creek Alder to the River Petewawa, the line may cross at the Narrows, at the foot of Lake Long, by a span of 100 feet; thence along the south side of Red Lake Pine, and along the southern base of the ridge, which extends along the north side of Lake Lamures to the Little Petewawa, which it may cross at the falls between Hogan's and Lake Lamures: thence passing the south-western bays of Lake Hogan to the right wing of Lake Crow. From this point it may follow a valley, leading to the third rapid from the mouth of River Crow; crossing this river with one span of 50 feet, rock foundations; thence south-easterly across the valley of a little brook which flows northerly into River Crow. Along the base of 'Baptist Ridge,' and along the flat land around the head of the south-eastern Bay of Lac Laviella to the outlet of Lac la Clare, where a bridge of 30 feet span will be required. Good stone may be procured on the spot. Thence along the shore of Lac la Clare to its northern bay, and by a valley running easterly to the inlet of Lake White Partridge.

"From this point either the northern or central branches of the head waters of the Bonnechere may be followed to what is known as the 'village,' on the north side of the river, a distance of from five to seven miles, thence crossing to the south side of the river, about a mile east of the 'village,' to Egg Rock, a distance of about sixteen miles. As far as could be judged, rock excavation will be necessary in rounding this rock. Thence along the south side of Lakes Round, Golden, and Mud to Eganville, and thence a distance of 22 miles to Renfrew.

"If thought desirable the line may cross to the north side of the Bonnechere, about six miles below Eganville, and continue down the north side through the village of Douglass to Renfrew, crossing to the south side again at the latter place; the south side is, however, reported to be the best throughout.

"The valley of the River Bonnechere from Renfrew to the 'village,' or head waters, Mr. Hazlewood says, has a uniformly even surface, and there would be no difficulty in constructing a railway through it. Very few structures of any importance would occur, and there is an abundance of good stone to be had close at hand. The grades and curves would be extremely easy. The land is good between Renfrew and Eganville, but between the latter place and the 'village' it is poor.

"On the whole distance from Lake Burnt to Renfrew the gradients need not exceed 1 per 100, and there will be no necessity for employing sharper curves than 1910 feet radius.

"With regard to the examination of the country between Lake White Partridge and Pembroke, Mr. Hazlewood was prevented by scarcity of water and the fires in the woods from walking over the whole of this portion of the country. He, however, managed to obtain a good idea of its character by canoeing along Lakes Crooked and Grand, as well as along the south branch of the River Petewawa, and by walking into the interior wherever an opportunity occurred. He also had a good view of the country from the top of the high hill near the mouth of the Carcajon, a stream flowing into Lake Grand. From what he saw, he thinks there would be no great difficulty in obtaining a fair line with easy grades and curves between Pembroke and the Lake White Partridge, at which latter point the examination to Renfrew branched off.

"East of Lake Burnt the land is reported as being broken, and of a poor quality, with the exception of about five miles west of Pembroke, and along the Bonnechere between Renfrew and Eganville.

"The distance from the mouth of River French to Lake Burnt, allowing for curvature, will probably be under 110 miles; from Lake Burnt to Douglass, say 95 miles; from Lake Burnt to Renfrew, say 107 miles; from Lake Burnt to Pembroke, say 78 miles.

"I am, &c., &c.,

"SANDFORD FLEMING."

"To the Hon. ALEX. MACKENZIE,

"Minister of Public Works,

"&c., &c."

As before mentioned, Mr. Fleming in this report deals with an extent of country beyond that covered by the Georgian Bay Branch, to which alone this contract alludes, and in order to see how far the statements of Mr. Hazlewood to which he there refers support the opinion that any particular grade could be obtained, it is necessary to keep out of view that portion of it which described the section further east than eighty-five miles from the mouth of French River. In this report Mr. Fleming does not profess to do more than to give the result of Mr. Hazlewood's walking reconnoissance. Mr. Hazlewood did not start at either end of the line which he examined. He proceeded first to Parry Sound district, and travelled up the road leading from Lake Rosseau to Lake Nipissing, until he came to his initial point for this survey, and that was the corner posts of lot 153 and lot 159. This point is on the general route of the line specified in this contract, and was about 60 miles distant from its western terminus—the mouth of French River. From this spot Mr. Hazlewood started on a direct course to that western terminus. Mr. Hazlewood is said to have reported the country between these points as being "favourable for railway construction, no obstacles of any importance presenting themselves, except near French River, where the heaviest rock excavation will be necessary. The streams are few and unimportant; the land, as a general rule, is level." This

description relates to the first 60 miles proceeding easterly from the mouth of French River, and ends at the corner posts between lots 158 and 159. From that point easterly, Mr. Hazlewood is said to have reported that "for the first eight miles some rough ground was encountered, but with a little time and care a good line may be secured." From the end of this eighth mile Mr. Hazlewood proceeded easterly, crossing the River South, at times, until he reached a point about 23 miles from the post between lots 158 and 159 aforesaid. He reported that from this point back to the eighth mile above mentioned the valley of the river south was wide and offered no serious obstructions to the location of an easy line through it. The end of this 28th mile was about three miles further east than the eastern terminus of the Georgian Bay Branch, as defined in the contract. At a short distance beyond this, that is, about the 29th mile, "the aspect of the country changes; the ridges were less elevated." Mr. Fleming also states that, speaking generally of the country walked over, Mr. Hazlewood had remarked that he felt quite safe in stating, that a railway could be located on a very direct course between French River and Lake Burnt, the latter being further east than the Georgian Bay Branch extended. We notice that Mr. Hazlewood has alluded to easy curves over this distance, but not to easy grades. The description of the country still further east is more definite, and it is mentioned only because it contrasts with the vague allusions to the gradients over the Georgian Bay Branch country. Speaking of the valley of the River Bonnechere, from Renfrew to the village, Mr. Hazlewood said that the grades and curves would be extremely easy, and that on the whole distance from Burnt Lake to Renfrew, the gradients need not exceed 1 per 100. The grade here defined "1 per 100" as obtainable near Renfrew was twice as steep as that which the Government required Mr. Foster to find on the Georgian Bay Branch. Inasmuch as Mr. Hazlewood spoke of that grade existing on a line on which the grades and curves would be extremely easy, we do not see why his indefinite description of the country further west, that crossed by the Georgian Bay Branch, should be taken to mean grades only half as steep as these; it is evident that Mr. Fleming had a strong faith in the contract gradients being obtainable, for when Mr. Foster submitted to the Government Mr. Shanly's report that the levels taken showed them to be not practicable, Mr. Fleming's answer was to the effect, that energy in further surveys would find a line within the terms of the contract.

We do not see anything in the extracts from Mr. Hazlewood's letters, of which Mr. Fleming reported a synopsis on 6th December, 1874, aforesaid, to sustain this strong opinion, and judging from the results and the other evidence, we have to say that the contract was entered into upon terms which were not possible to be fulfilled, and that the Chief Engineer had not then sufficient grounds for supposing them to be possible of fulfilment.

Before the Government paid Mr. Foster his disbursements in connection with this contract, he submitted a statement showing an outlay of over \$63,000 on this contract, and that for the extension eastward before alluded to, concerning which Mr. Fleming reported as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 28th April, 1876.

“SIR,—With respect to that part of the Order in Council of March 8th, touching the value of the works of exploration, survey and construction performed by the Hon. A. B. Foster I have made every enquiry into the subject, and I feel assured that in the event of the Georgian Bay Branch being proceeded with, the expenditure incurred will generally be available in the prosecution of the work.

“I find, of the accounts furnished by Mr. Foster, there are only receipts for about \$20,000. Accordingly I would advise that he be called upon to furnish complete vouchers, and that the whole be placed in the Audit Department for examination.

“I am, &c.,

“SANDFORD FLEMING.

“F. BRAUN, Esq.,

“Secretary Public Works Department.”

The contractor received on account of his disbursements under this contract:—

March 13, 1876	\$20,000
May 6, “	4,000
“ 9, “	4,000
“ 10, “	8,000
“ 30, “	5,000

Total.....\$41,000

CONTRACT NO. 13.

Railway Construction,

By this contract, dated 3rd April, 1875, Henry Sifton and Frank Ward, partners under the name of Sifton & Ward, bound themselves to complete the road-bed of the railway between Fort William on Lakes

Superior and Shebandowan, about 45 miles in length, providing all materials except ties, sleepers, rails, fastenings, ballasting, and the laying of the track, the whole to be finished by the 1st of August, 1876; receiving therefor the prices mentioned in their tender, and applied to the items given in the bill of works, which bill of works, together with a copy of their tender, was attached to their contract.

Before entering into this contract the Government, in view of the possibility of the road east of Thunder Bay not being constructed for several years, had adopted the policy of obtaining a line of railway between Thunder Bay and Red River *viâ* Rat Portage, as short as possible, and with the best possible grades and curves, and looking to water communication being used between the Ontario system of railways and Fort William as well as, possibly, on the small lakes in the interior of the country, for a time, and the Government decided to construct the portion covered by this contract as well as that between Red River and Rat Portage, as fast as it could be put under contract. At this time the Government did not understand that such an instrumental survey had taken place as made it possible to mention the quantities over the whole line with anything like accuracy, but it was understood that the east and west ends had been then "ascertained." As to the section covered by this particular contract, the Government at the time of deciding to build the line, considered, and the engineers had reported, that they had the means of arriving at accurate quantities of the different kinds of work to be executed, and because the specifications on which this contract was let purported to give quantities, the Minister of Public Works came to the conclusion that there had been a regular location of the line. The evidence establishes the fact that at the time of letting this work there had not been a regular location of the line, but only a trial location, which is sometimes called a preliminary survey, and that no such calculation or examination had taken place, as would enable the quantities of the several kinds of work to be executed, to be given with approximate accuracy. The location of the line was actually begun some weeks after the contractors were on the ground ready for work. A claim, made by the contractors, for the delay so occasioned, was subsequently paid by the Government under the award of Mr. Marcus Smith, who was authorized to investigate and settle the matter.

The subject of the method of letting contracts upon bills of works, which give approximate quantities, or upon those which are far from correct, has been much discussed in relation to this contract and others which followed

it. Evidence touching this subject was taken before the Select Standing Committee on Public Accounts in 1879, upon which they made their first report of the 8th May, 1879, as well as before a Select Committee of the Senate, who reported in March, 1879. The Chief Engineer had previously advocated, and said while giving evidence before these bodies that he knew of no better way than letting contracts by bills of works such as those which had been adopted for this and other contracts between Red River and Thunder Bay, in which the quantities, according to his account, were not supposed to be approximate, but were furnished only for purposes of comparison, and he contended that one could get a fair comparison of tenders in that way. The result of such a system upon the expenditure under the contracts is remarked upon more fully in our report upon engineering (page 71). We allude to it here, because, when giving evidence before us concerning the letting of this contract, and although it was, in fact, the one of the three first on which there was the least discrepancy between the estimated and the executed quantities, Mr. Fleming stated that the information obtained by the engineers up to the time of advertising for tenders in this case, was not so full as could be desired, and he did not know that sufficient had been obtained to enable the contract to be let at the lowest possible price. At the time of letting this contract it was understood that Rat Portage was an objective point, but it was not known whether that was to be reached over a railway to Lake Shebandowan and thence partly by water stretches, or altogether by a railway line, of which the residue was to be afterwards located, but it was thought important, at all events, that the Lake should be tapped by the first link of railway going westerly from Thunder Bay.

Tenders for the work described in this contract, to be received up to the 27th February, 1875, were invited by advertisement. The work was intended to be and was let upon what is called a detail system, as distinguished from a lump sum system. A schedule showing each class of work, or materials, if any, to be furnished by the contractor, as well as the quantities assumed to be probable on each item, was furnished to tenderers, they being required to state a price for each item. The moneying out of these items and their respective prices gave a gross sum to each tender, which would form the basis of comparison between them all.

In this case such specifications concerning the work and a bill of the estimated quantities on each item were furnished to applicants. As before mentioned, the line let under this contract extended to Lake Shebandowan,

a distance of 45 miles from Thunder Bay, and the quantities stated in the bill of works were based upon that intended distance. The tenders were opened in the presence of Mr. Braun, the Secretary, Mr. Rowan an Assistant Engineer, and Mr. Palmer, an Accountant, on the 1st of March, 1875. The moneying out of the items in the bill of works at the prices proposed by each offer, gave the following results in relation to the four lowest :—

E. A. Charters & Co.....	\$363,420
G. W. Taylor.....	397,520
Sifton & Ward.....	406,194
J. Wardrop.....	410,025

On the day of the opening Mr. Fleming reported to that effect. On 3rd March, Mr. Braun telegraphed Mr. Charters, a member of the firm of E. A. Charters & Co., asking if he was ready to take the contract as tendered for. On the next day Mr. Charters telegraphed in reply saying that he had not expected an answer so soon, and would require a short time to see other persons, adding that he would in all probability accept the contract if time was allowed. On the 11th of that month Mr. Braun telegraphed to Mr. Charters as follows :—

“Not hearing from you, and ample time being allowed, the Minister has passed on to the next tender.”

To which the following answer was sent :—

“Telegram received, and having had no answer from you regarding my first request for delay of time, I was compelled to relinquish contract against my will.”

The contract having been offered by the Department to Mr. Taylor, the next lowest tenderer, he telegraphed on the 15th March to Mr. Braun, as follows :—

“Still confined to bed ; will have to abandon contract.”

Upon which the contract was awarded and offered to the present contractors, who were the next lowest tenderers. It was accepted by them and closed.

Our conclusion upon the evidence is that in obtaining this contract the contactors got no undue advantage, and that the action of the Department in awarding it caused no unnecessary expense.

The work was not completed over the whole distance to which the contract was originally intended to apply. Further surveys and examination of the country had shown that a continuous line of railway could be

secured from Thunder Bay to Rat Portage, by deflecting it before reaching Lake Shebandowan, and it was decided to carry the work no further than Sunshine Creek upon the route at first adopted. A clause in the contract enabled the Government to make this change.

The line described in the contract was, as before mentioned, about forty-five miles long. The distance from Thunder Bay to Sunshine Creek was about thirty-two and a-half miles, and the contractors were given the option of stopping work under their contract at the last mentioned point, or of proceeding until they reached on the new line the same distance from Thunder Bay that had been originally intended, namely, about 45 miles. They elected to stop at Sunshine Creek.

This contract did not include track-laying or ballasting. A subsequent contract, No. 25, upon which we hereinafter report, was made to cover the construction of a road-bed, over a distance further west than was made under this contract, and the track-laying and ballasting of the whole distance from Thunder Bay to English River, the western end of that contract.

In 1876, Mr. Marcus Smith, then acting as Engineer-in-Chief, visited the work under this contract and walked over twenty miles of it. The work was satisfactory, and was progressing well. In July, 1878, Mr. Marcus Smith again visited this section. The contract was then nearly finished, so nearly that the contractors on the next section had begun to lay the rails on this one. Some of the work under this contract was left unfinished by Sifton & Ward, for the reason that it was desired that the track-laying and ballasting should be proceeded with immediately, and this unfinished work was done by the contractors for section No. 25. It was principally widening and raising the height of embankments, together with some cuttings.

In the case of this contract the amount of work executed and paid for, was considerably in excess of that estimated as probable at the time of letting the contract, and some increase in cost was due to changes in the character of the work, but that would be more than balanced by the saving of expense caused by other changes in the character, one of which was the use of trestle in places instead of solid embankments. The principal cause of the excess was, in our opinion, the inaccuracy of the quantities first estimated, and that was due to the data then ascertained being insufficient for

the purpose of affording close calculations. This matter is remarked upon more fully under the head of Engineering.

The work under this contract was not done, when that of the adjoining section on the west, (No. 25), was let to Purcell & Ryan—which included also the track-laying and ballasting of this section; and as before mentioned in order to prevent the confusion which might arise if two contractors were carrying on, at the same time, work of different kinds over one line, it was considered advisable to take this section as it was from the contractors, and to allow Purcell & Ryan to do the unfinished work at the prices of this contract. This was carried out without disagreement, and it will account for the fact that the amounts charged to this contract were paid, some to Sifton & Ward, some to Purcell & Ryan.

The amounts paid were as follows:—

To 30th June, 1876, to Sifton & Ward.. ..	\$141,700 00
“ 1877 “	114,100 00
“ 1878 “	42,000 00
“ 1879 “	15,400 87
	<hr/>
	\$313,200 87
“ 1878, to Purcell & Ryan.....	13,700 00
“ 1879 “	5,000 00
	<hr/>
Total.....	<hr/> \$331,979 51 <hr/> <hr/>

CONTRACT No. 14.

Railway Construction.

By this contract, dated the 3rd of April, 1875, Henry Sifton and Frank Ward, partners under the name of Sifton & Ward, bound themselves to complete the road-bed of the railway between Red River and Cross Lake, a distance of seventy-seven miles as specified in the said contract, providing all labour and all materials excepting the ties, sleepers, rails, fastenings, ballasting and tracklaying; receiving for the work done the rates and prices respectively applied to the different classes of work mentioned in the tender of the contractors, a copy of which tender was affixed to the contract.

Tenders for this work were invited by advertisement at the same time as those for section No. 13, and in pursuance of the Government policy

described in our remarks upon that contract, under which the Government decided to construct the portion from Red River to Rat Portage, and from Thunder Bay to Lake Shebandowan as quickly as possible.

This is one of a series of contracts which were let upon the schedule price system as distinguished from the lump sum system, and in which it was intended to give tenderers some information upon the subject of the quantities, which were expected to be executed in the progress of the work. In this series, the work executed largely exceeded the quantity which was estimated at the time of inviting the tenders, but, according to the opinion of Mr. Fleming, the inaccuracy of quantities would have no appreciable effect upon the relative rank of the tenders, although it might lead to disappointment because of the total amount which was to be paid to the contractor. In giving his evidence before us he said that, assuming no other reasons than financial ones as governing the question, exact quantities are not essential. We have remarked upon this subject in our report upon the engineering of the line, (page 71). The effect of it upon the amounts paid under these different contracts before alluded to, was discussed very fully, and evidence given concerning it before the Select Standing Committee on Public Accounts in 1879, and it was made the subject of their first report of the 8th May of that year. It was also investigated, and evidence taken upon it before a Select Committee of the Senate, in March, 1879.

In this case applicants were furnished with schedules of quantities, showing the amount of work expected to be done in each class, and with specifications describing the work, and other particulars.

On the 31st March, 1875, the Engineer-in-Chief reported upon the substance of the tenders sent in concerning this contract. He reported upon eight of the lowest. It will be sufficient to notice the first three of them. They were:—

Wallace & Co.....	\$377,250
Sifton & Ward.....	402,950
T. W. Patterson.....	407,970

On the 25th March, Mr. Braun telegraphed to Mr. Wallace, one of the firm who made the lowest tender, as follows:—

"If your tender for contract 14 is accepted, are you ready to make deposit required? If so, come. Contract papers must be completed within eight days from this. Answer."

On the same day, 25th March, Mr. Wallace telegraphed Mr. Braun:

"I am ready, and will be there to close contract first of next week."

On the 29th, Mr. R. J. Campbell telegraphed Mr. Braunn as follows :

"Just heard that section 14 was awarded us. If necessary, will you extend the time to qualify five days? Answer."

At the foot of the telegram a memorandum is made in these words :

"Minister says no. March 30th, 1875."

And on that day Mr. Braun telegraphed to Mr. Campbell :

"Time cannot be extended ; matter too urgent. Answer."

On the 31st Mr. Campbell telegraphed to Mr. Braun :

"When will time expire? Answer immediately and oblige."

And on the same day Mr. Braun telegraphed to Mr. Campbell :

"Time expires Friday, second proximo."

On the 3rd April, Mr. Campbell telegraphed to Mr. Braun :

"Our inability to qualify, was owing to Wallace being sick; will be in Ottawa and explain. Hope it will have no effect on 15. Notify me at St. Catharines on 15."

This firm were tenderers for the adjoining section, No 15, which had been advertised at the same time as section No. 14. Upon the failure of Wallace & Co., to put up the requisite security within the time named as aforesaid, the contract was awarded to Messrs. Sifton & Ward by order of the Minister. This was upon the same day that this firm were closing the arrangements concerning contract No. 13.

According to the account of Mr. John W. Sifton as a witness before us, Mr. Trudeau asked Mr. Sifton whether he could put up the security immediately if the contract should be awarded to him, and said that Parliament was about to be dissolved and it was desired to close the matter before the House prorogued. The contract was executed upon the same day as that for section No. 13.

We find that in obtaining this contract the contractors got no undue advantage, and that the action of the Department, in awarding it, did not increase unnecessarily the cost of the railway.

The time named for the completion of this work, under the contract, was the 1st of August, 1876, at which time it was not nearly finished. The first delay in the progress of the work, was because the location had not been finally adopted, at the time the contractors reached the ground ready to go on. A location had been made, but at the west end, where it was

intended to commence work, there was a probability of a change being made, and the engineers were not ready to lay out the work for the contractors. Work really commenced at a point about five miles east of the terminus of the line embraced by this contract. The contractor has stated in evidence that he arrived on the ground in the latter part of April or beginning of May, with large numbers of men and horses; that they had about sixty teams and twelve hundred men, and kept them for some time, paying their board, and because the work was not ready to proceed these men were scattered, and it was difficult to get men in again that summer; that at first they were paying \$1.75 per day; that afterwards they had to raise the wages in the hope of bringing back men, but even then they failed, for it was reported in the States, to which place most of them had gone, that there was no work going on, and labourers were afraid to come. The engineers went in June to lay out the work. The contractors had to build a road from Red River to the point at which they were allowed to commence, over which to carry their supplies. In the following December the contractors got notice not to proceed further with the work. This notice to stop was positive and unqualified. The contractor testifies that the stoppage at this time had the effect of delaying the completion of the works as much as a year. Towards the end of 1878 Mr. Marcus Smith, acting Chief Engineer, after visiting this section, stated that the contractors were not likely to get it done within the time that the Government was willing to allow them for that purpose.

The country for about a mile and a-half at the east end of this section partakes of the character of section No. 15, the one next east of it, and is quite different from the rest of section No. 14. There was a very deep filling upon it which could not be completed satisfactorily, without the use of machinery, a train of cars and a steam-shovel, which Sifton & Ward had not procured, and which were not necessary upon the westerly portion of the work. The contractors claim that they would have procured the necessary machinery if time had been given them to do it, but that the Acting Engineer-in-Chief was urgent, and pressed them to make an arrangement by which Mr. Whitehead, the contractor for section 15, should undertake the finishing of this easterly length of about a mile and a-half, and that in consequence of that pressure, they did close such an arrangement subject to the approval of the Minister. Upon this matter, as well as upon the delay caused as aforesaid at the beginning of the work, and also in consequence of some changes in the localities in which the work was by the engineers,

directed to be done, these contractors were making, at the time of our examination of witnesses, in Winnipeg, a claim against the Government, to the amount of over \$200,000. We were requested by the contractors to consider their claim, evidently with the idea that we had some jurisdiction over it. We intimated to them that we did not think it within our authority, and that it was not likely that we would pass any judgment upon it; but we would not refuse to hear such evidence as they proposed to bring forward, because, although it was not necessary to hear it in order to ascertain the foundation of their claim, it would enable us to learn something of the management by the Government Engineers of the operations under the contract. We have taken evidence concerning the expediency of locating this line in its present position, and have reported upon that feature of it under the head of "Engineering."

The following amounts have been paid on account of this contract to 30th June, 1880:—

30th June, 1875, to Sifton & Ward.....	\$	468
" 1876 "		113,012
" 1877 "		130,470
" 1878 "		250,750
" 1879 "		138,780
" 1879, to Joseph Whitehead, on work at East End.....		18,500
" 1880 "		73,230

Total.....	\$	725,210

CONTRACT No. 15.

Railway Construction.

By this contract, dated 9th of January, 1877, Robert Twiss Sutton, William Thompson and Joseph Whitehead, covenanted that they would, on or before the first of July, 1879, provide and do all that was necessary to complete the works set out in the specifications thereto annexed; including amongst other things all the excavation, grading, and other works to be done between station 1940, near Cross Lake, and station 0 at Rat Portage,

together with the track-laying and ballasting (by one lift) between Red River and Rat Portage, receiving therefor the prices specified in the contract for the respective kinds and quantities of work and material, which should be provided by them in carrying out their contract. At the time of executing this contract, Mr. Sutton and Mr. Thompson were not interested in its consequences. They lent their names in pursuance of an agreement between them of the one part, and the Hon. Donald MacDonald, a member of the Dominion Senate, and Joseph Whitehead, above mentioned, of the other part, by which they (Sutton and Thompson) should be indemnified for the use of their names until they were released from the undertaking; and that they should be released as soon as possible, the real understanding concerning this contract and its results, being one which had been made between the said Mr. McDonald and Mr. Whitehead and Mr. Mitchell McDonald, to the effect, that it should be carried on as a partnership between Mr. Mitchell McDonald and Mr. Joseph Whitehead aforesaid.

Although the track-laying and ballasting in this contract extended over the whole distance from Red River to Rat Portage, the principal portion of the work, namely, construction of the road-bed, extended only over the eastern portion of the whole distance, *i.e.*, from Cross Lake to Rat Portage. This last-named distance has come to be known and generally alluded to as section 15, or contract 15. The work under this contract was tendered for and let upon a schedule of items and estimated quantities for each item, and upon prices to be paid for such items respectively. It was one of a series of contracts for distances between Lake Superior and Red River, in which the quantities were not stated in the schedules with approximate accuracy, and which were largely exceeded in the execution of the works.

The system of letting the contracts in this way was approved by the Engineer-in-Chief, as affording a proper means of comparing the relative rank of tenders without any material disadvantage to the country except in so far as a disappointment might ensue, in consequence of the total outlay being larger than was to be expected, from the quantities so stated. This system has thus become an engineering question, rather than one to be disposed of when reporting on the action of the Department, in letting the contract. For this reason, as well as because it affects several contracts, we have reported our conclusions on that system under the head of 'Engineering,' (page 71.)

There have been several reports to Parliament on subjects which embrace matters connected with this contract. On the 8th of May, 1879, the Select Standing Committee on Public Accounts, in their first report, submitted to the House of Commons documents and evidence touching the letting of this contract, the system on which the tenders were invited, the consequences of that system, and the proceedings under the contract. In March, 1879, a Select Committee of the Senate was appointed to enquire into matters relating to this railway, and to take evidence upon most of the subjects above enumerated. The evidence taken before this Committee of the Senate was printed. A printed return to the House of Commons, dated 28th of March, 1877, gives papers and correspondence, &c., connected with the awarding of this contract, and minutes of Council concerning the same.

Before entering into this contract tenders concerning the construction of the road-bed included in it had been received on three different occasions. On the first occasion the tenders were received in March, 1875, at the same time as that named for the works to be done under contract 14. Specifications, dated the 25th February, 1875, describe the works intended on that occasion to be contracted for. It was then proposed to make the road-bed for the line with "solid embankments throughout, everything complete," somewhat of the same character as at present constructed, only with more rock and less earth in the embankment, the grade being then at a lower level than that now adopted. The substance of the tenders then sent in was reported on by Mr. Fleming, under date of 31st March, 1875, showing the following as the result of the seven lowest :—

C. H. Lewis.....	\$997,892 50
O. Manson & Co.....	1,042,635 00
Wallace & Co.....	1,109,156 00
Robinson & Co.....	1,685,580 00
Steady & Steady.....	1,688,915 00
Rorque & O'Hanley.....	1,860,500 00
H. F. Sharpe.....	1,888,340 00

These offers involved an expenditure greater than was then considered expedient, and it was decided to ask for tenders for making only such portions of the embankments as would be provided from the cuttings, leaving the gaps unfilled and to be crossed under some subsequent arrange-

ment. Tenders were invited upon that basis, and were received in May, 1876, of which the eight lowest were as follows:—

Names of Contractors.	Names of Sureties.	Penalty or Bonus per day.	Amount of Tender.
		\$	\$
Hunter & Murray.....	John Healy, W. Coy.....	5	935,025
Rodgers & Co.....	O'Brien, Lyons & Martin.....	1,000	1,068,600
Sifton & Farewell.....	J. Sifton, J. H. Fairbank.....	1	1,222,310
Patrick Purcell.....	W. Barrett, James Purcell.....	5	1,244,400
A. P. McDonald & Co.....	P. McRae, R. Ray, J. McKintosh.....	50	1,286,710
Brown & Ryan.....	W. Doran, A. Sutherland.....	Nil.	1,323,910
Joseph Whitehead.....	J. T. Wilkie, E. Stevenson.....	500	1,450,510
J. A. Henry & Co.....	C. W. Phelps, T. Hammill.....	10	1,616,450

It was decided not to accept any of them.

In August, 1876, competition was again invited for work to be done on this section, and the specifications then furnished were the basis of the present contract. The main features of the scheme then devised were the excavation of the cuttings which were mainly in rock; the material from such cuttings to be deposited near them in the embankment, and the gaps left after this and after using such earth as there was in the neighbourhood, were to be crossed by wooden trestle work. The following is the advertisement for tenders on this last occasion:—

“CANADIAN PACIFIC RAILWAY.

“TENDERS FOR GRADING, TRACK LAYING, &c.

“Sealed tenders addressed to the Secretary of Public Works and endorsed: ‘Tender Pacific Railway,’ will be received at this office up to noon of Wednesday, the 20th September next, for works required to be executed on that section of the Pacific Railway, extending from Red River eastward to Rat Portage, Lake of the Woods, a distance of about 114 miles, viz:—The track-laying and ballasting only of about 77 miles, and the construction, as well as track-laying and ballasting, of about 37 miles between Cross Lake and Rat Portage. For plans specifications, approximate quantities, forms of tender and other information, apply to the office of the Engineer-in-Chief, Ottawa.

“No tender will be entertained unless on the printed form and unless the conditions are complied with.

“F. BRAUN,

“Secretary.

“Department of Public Works,

“Ottawa, 1st August, 1876.”

Some idea may be formed of the expectation of the Department at that time concerning the character of the work as a whole to be done under this contract, by giving the quantities of the main items mentioned on that occasion in the bill of works. Under the head of "approximate quantities" they were as follows:—

300,000 cubic yards of solid rock excavation,

30,000 " " loose " "

80,000 " " earth excavation on line cuttings and borrowing,

1,615,500 lineal feet of timber (square and round) for trestles, bridges, etc.

The length of the road-bed was about 37 miles altogether. It has been stated in evidence that the wood work provided for in these specifications, would be sufficient for about eight miles of trestle viaduct. The following is a report of the substance of the tenders received on this occasion:—

List of Tenders received 20th September, 1876.

1. A. P. Macdonald & Co	\$1,443,175
2. Martin & Charlton	1,562,090
3. Sutton & Thompson	1,594,085
4. John A. Green....	1,679,065
5. Talbot & Jones	1,683,085
6. W. Hinkson	1,695,665
7. W. S. Booth	1,744,120
8. C. C. Gregory.....	1,745,415
9. Mullen & Whelan.....	1,749,595
10. O'Brien & Rider	1,806,810
11. A. Farewell	1,815,185
12. Hill, Lipe & McKechney.....	1,827,155
13. Wright, Shackhill & Cross	1,832,175
14. Kavanagh & Kieran.....	1,895,404
15. W. A. Cleveland	1,899,680
16. Joseph Whitehead	1,899,790
17. Hunter & Murray.....	1,966,755
18. Campbell & Riley.....	2,052,770
19. Macfarlane & McRae.....	2,093,970
20. Brown & Ryan	2,199,125
21. Reid, Davis & Henry	2,950,000

MARCUS SMITH,

Per W. B. SMELLIE.

The result of this competition is remarkable in that the lowest tender on this new and supposed cheaper method of providing a road-bed, is nearly fifty per cent. higher than the lowest offer in March, 1875, which latter was made to construct a road-bed of "solid embankments, everything complete." And this comparison is not confined to the lowest offers on the two occasions, for the average of them all would be in about the same proportion.

By arrangements subsequent to the contract the character of the work has been so far changed, as to make it very similar to that proposed by the first scheme in 1875, solid embankments throughout. At the date of our commission the work was not completed, but the progress estimate of the 31st May, 1880, showed that what was done up to that time amounted, at the prices named in this contract, to \$1,951,022. Of this \$161,615 was for ballasting and track-laying—items not included in the tenders in 1875, thus leaving the balance of \$1,789,407 paid up to the 31st May, 1880, and this was expected to be increased, by the completion of the contract, to the neighbourhood of \$2,300,000 as the cost of a road-bed, of the general character similar to that which was contemplated, at the time of receiving tenders in March, 1875. This is considerably higher than the average of the seven lowest tenders sent in at that time.

The following correspondence shows the negotiations between the Department and the firm who made the lowest tender, 20th of September, 1876 :—

" 30th September, 1876.

" Please deposit to credit of Receiver-General the five (5) per cent. required in connection with contract for Section (15), Canadian Pacific Railway, and forward bank certificate.

" F. BRAUN,

" *Secretary.*

" MESSRS. MACDONALD & KANE,

" 394 St. Antoine Street, Montreal."

" 7th October, 1876.

" MACDONALD & KANE,

" 394 St. Antoine Street, Montreal.

" In view of advanced state of season Minister requests you to state by twelfth (12) instant at latest the precise time when you will deposit requisite 5 per cent. Section (15) fifteen, C.P.R.

" F. BRAUN,

" *Secretary.*"

" OTTAWA, 13th October, 1876.

" SIR,—In making out our tenders for sections 14 and 15, Canadian Pacific Railway, our figures were based upon the early completion of section 14, by the present contractor, as a means of transportation by rail between section 15 and the Red River, believing that a large quantity of the timber and ties required would have to come by way of that river.

"The above mentioned means of access caused a reduction of 25 per cent. to be made by us in our bid, as we were of the opinion that the track laying on section 14 would make it available by August, 1877.

"This would give us connection with the west end of section 15, upon which a large amount of work has been done with no other means of access without a very heavy outlay. From the best information we have, the contractors of section 14 have been granted an extension of time; so that it will take two years before that section could be made available to carry men and supplies. Believing, as we do, that the Government in connecting the track-laying, ballasting, &c. of section 14 with section 15, that it would facilitate and lessen the cost of section 15.

"On account of the above mentioned facts, it would be imprudent in us to enter into contract unless we were put into possession of the advantages which the specification and form of tender led us to believe and base our calculations upon.

"Now if the Government will make good to us the difference between bringing men and supplies by rail over section 14, and the most available route by land and water from the 1st August, 1877, until such time as section 14 is completed, and extend our time of completion in accordance with the delay of getting track to section 15.

"We are prepared to enter into contract and furnish the necessary securities required.

"We are certain that it will be difficult for the Government to get good experienced contractors to take the work unless the advantages of access could be granted them.

"Hoping you will favourably consider our requests, which we believe we are justly entitled to, and should be fairly understood before entering into contract.

"We have the honour to be, Sir,

"Yours respectfully,

"A. P. MACDONALD,

"ROBERT KANE.

"To the Hon. ALEX. MACKENZIE,

"Minister of Public Works,

"Ottawa"

"OTTAWA, 14th October, 1876.

"GENTLEMEN,—I am directed to acknowledge the receipt of your letter of the 13th instant, in which you state that you will be prepared to enter into a contract with the Government for the execution of the work on section 15 of the Canadian Pacific Railway, on the Government agreeing to make good to you the difference of cost in the transport of men and materials you may require by rail over section 14, and by any other route that may have to be followed should section 14 not be ready early enough, and on certain other conditions.

"In reply, I am to inform you that the Government cannot consent to any modification of the condition laid down in the specification for these works.

"I beg to request that you will inform the Department immediately on the receipt of this letter, whether you intend to sign the contract or not.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"Messrs. A. P. MACDONALD & KANE,

"Ottawa."

"OTTAWA, 14th October, 1876.

"SIR,—I have the honour to acknowledge the receipt of your letter of the 14th instant, and beg to say, in reply, that I will answer your communication on Monday next.

"I have the honour to be,

"Your obedient servant,

"ROBERT KANE.

"F. BRAUN, Esq.,

"Secretary, Public Works."

"MONTREAL, 16th October, 1876.

"SIR,—In reply to your communication of the 14th instant, we beg to state that we cannot enter into contract for sections 14 and 15, Canadian Pacific Railway, on account of reasons stated in our letter of the 13th instant.

"We therefore most respectfully decline to sign said contract, but beg to add that if the Minister of Public Works should see fit to change his decision we would most gladly enter into contract.

"We have the honour to be, Sir,

"Your obedient servants,

"A. P. MACDONALD,

"ROBERT KANE.

"F. BRAUN, Esq.,

"Secretary, Public Works Department,

"Ottawa."

After this refusal by Messrs. Macdonald & Kane to carry out their tender—except on new conditions—the Department passed to the firm first above them, Messrs. Martin & Charlton, when the following correspondence took place:—

"17th October, 1876.

"GENTLEMEN,—With reference to your tender, dated 20th ultimo, for the 15th contract of the Canadian Pacific Railway, I am directed to request you to state how soon you would be ready to put up the requisite 5 per cent. deposit in connection with said contract.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"MESSRS. MARTIN & CHARLTON,

"Contractor, Montreal."

"OTTAWA, 18th October, 1876.

"SIR,—In reply to your letter of yesterday, I have the honour to state that I shall be prepared to put up the requisite five per cent. security in mortgages on real estate in ten or twelve days.

"I have the honour to be, Sir,

"Your most obedient servant,

"E. J. CHARLTON, for

"MARTIN, CHARLTON & Co.

"F. BRAUN, Esq.,

"Secretary, Public Works Department,

"Ottawa."

At this stage of the negotiations the following communications passed between the Department and the acting Chief Engineer :—

“(Telegram.)

“MONTREAL TELEGRAPH COMPANY,

“From WINNIPEG, 21st October, 1876.

“To F. Braun.

“What has been done with Contract Fifteen? Full staff of engineers and axe men now on ground; could be reduced if contractors will not commence work before spring. Navigation just closing, after which contractors plant cannot be brought in except by trains from Moorehead, a distance of over three hundred miles.

“MARCUS SMITH.”

“24th October, 1876.

“Marcus Smith, Winnipeg.

“Reduce staff, as work on contract fifteen (15) cannot begin before spring.

“F. BRAUN.

“Secretary,”

“(Telegram.)

“MONTREAL TELEGRAPH COMPANY,

“From WINNIPEG, 25th October, 1876.

“To F. Braun.

“If contract fifteen not let it may be better to defer it till my return. Last improvement in location and gradients materially alters quantities, reducing timber work and slightly increasing rock. Leave here to-morrow or next day.

“MARCUS SMITH.”

This led to no discontinuance of correspondence with the tenderers, and it proceeded as follows :—

“28th October, 1876.

“GENTLEMEN,—With reference to your letter of 17th instant, respecting the security required for due performance of works on section 15, Canadian Pacific Railway, I am to state that unless proper security be deposited as in your said letter your tender will be passed over.

“I have the honour to be, Gentlemen,

“Your obedient servant,

“F. BRAUN,

“Secretary.

“MESSRS, CHARLTON, MARTIN & Co.,

“Contractors, Montreal.”

Between the 28th of October, 1876, and the following 21st of December, many letters upon the subject of the requisite security passed between the Department and Messrs. Martin & Charlton. These letters are not material to our report. They are set out in the return to the House of Commons before mentioned. Mr. Whitehead, one of the contractors in this case, had on his own account sent in a tender considerably higher than the one made by Sutton & Thompson, on which this contract is based; but after the

tenders were opened, he discovered, in conversation with persons who had made offers, that there were several between his and that of Sutton & Thompson. This firm knew that they could not put up the security, and were willing to sell out their position. Mr. Whitehead bargained with them that he was to have the privilege of assuming their tender and becoming the sole proprietor of it upon payment to them of \$10,000. He procured from them the following letter to the Department :—

“BRANTFORD, 16th October, 1876.

“SIR,—In the event of our tender for the construction of section fifteen of the Canadian Pacific Railway being accepted, we desire to have associated with us in the contract, Mr. Joseph Whitehead, of Clinton, contractor.

“Your obedient servants,

“SUTTON & THOMPSON.

“Hon. ALEX. MACKENZIE,

“Minister of Public Works, Ottawa.”

Being thus interested in the withdrawal of Messrs. Charlton & Martin, whose offer was the only obstacle in his way to the contract, he wrote the following letter with the intention of furthering his own interest :—

“OTTAWA, 28th November, 1876.

“DEAR SIR,—It is the general impression outside that you are going to give the contract section 15 to Charlton & Co., and he is going to turn the contract over into the hands of some Americans from New York, and, according to the feeling, you are going to make a great mistake if you allow such a thing to be done, as it is well known that Charlton says that he never intended to put a spade into the contract of section 15; he only wanted to make some money out of it the same way as he did out of the Grenville Canal, when he sold out to Cooke & Jones, and got six thousand dollars.

“Now, if you will give the contract section 15 to Sutton & Thompson's tender, I will guarantee that the grading, track-laying and ballasting shall be done and complete; the engine into section 15 by the month of August next; and, further, the whole of section 15 shall be finished complete by the fall of 1878, and for every day over and above, if any, you shall have the best of security that the Government shall be paid five hundred dollars per day for every day over and above the two dates named above, and this is the only way to put some life into the Pacific Railway, as there has been no life in it yet.

“Now, I hope you will pardon me for taking the liberty of writing you this note, as I have no other object in view than to let you know the feeling outside, as you must admit that Sutton & Thompson's tender is not an extravagant one, only I know what I have said in this note can be done.

“I remain your obedient servant,

“JOSEPH WHITEHEAD.

“Hon. ALEX. MACKENZIE.”

It was subsequently arranged between Mr. Whitehead and the Hon. Mr. McDonald, aforesaid, and as Mr. Whitehead believes at the suggestion

of Mr. McDonald, that Charlton should be paid to withdraw his tender. Mr. Whitehead's evidence on this point was that he said he "would go \$20,000, and Mr. McDonald made the rest of the arrangement." About the 20th of December, 1876, the Hon. Mr. McDonald, Mr. Whitehead and Mr. Charlton met in a room at the Prescott Station on the Grand Trunk Railway. Then Mr. Whitehead went out of the room and the arrangement was closed between Mr. McDonald and Mr. Charlton, by which Mr. Charlton withdrew his tender. Mr. Whitehead did not see the money paid, but Mr. McDonald told him that the amount was \$20,000, and Mr. Whitehead afterwards paid him interest on that sum at the rate of ten per cent. per annum, believing it to have been the amount which was paid over at that time. Mr. Charlton said to a witness who gave evidence before us that he had received a sum of money to withdraw his tender in this case, but he did not name the amount. We have not considered it necessary to ascertain, whether he had received the full amount stated by Mr. McDonald to have been paid to him, that being principally a matter of account between Mr. McDonald and Mr. Whitehead. The following letters and telegram appear as the next steps towards the contract in its present shape:—

"MONTREAL, 21st December, 1876.

"SIR,—I have the honour to acknowledge receipt of your letter of 19th inst., directing me to furnish additional paper and mortgage registrations as therein detailed in connection with the required security for completion of the 15th contract, Canadian Pacific Railway. I have met with so many unfortunate difficulties in procuring security for so large a sum so as to satisfy the demands of the Government, and have been so worried and disheartened by the difficulties of the position in which I found myself, and consequent failing health, that I am reluctantly obliged to say that I cannot now undertake so serious an enterprise, more especially as all the most experienced men whose advice or assistance I have asked, have convinced me and my friends that the work cannot satisfactorily be performed for the price tendered for.

"I beg therefore to ask that the Honourable Minister of Public Works will allow me to withdraw my tender, and will please to return to Mr. Baird of Brooklyn, who proposed to join in the work, his deposit, and also to return to me the papers which I deposited as given to make up the balance of the security required.

"I have the honour to be, Sir,

"Your obedient servant,

"E. J. CHARLTON.

"F. BRAUN, Esq.,

"Secretary, Department of Public Works."

"MONTREAL TELEGRAPH COMPANY.

"By Telegraph from Montreal.

"F. BRAUN, :

"Dissension from within, added to extraordinary pressure from without, has left no alternative but withdrawal.

"CHARLTON & CO."

"29th December, 1876.

"SUTTON & THOMPSON,

"Brantford.

"Are you prepared to deposit five (5) per cent. security in connection with contract fifteen (15), C. P. R., and enter into contract without delay ?

"F. BRAUN,

"Secretary."

"BRANTFORD, 29th December, 1876.

"To F. BRAUN, Esq.,

"Secretary.

"Yes ; we are prepared to comply fully.

"SUTTON & THOMPSON."

"OTTAWA, 29th December, 1876.

"SIR, — *Re* section 15 Canada Pacific Railway, I have just learned with much surprise, through your Department, that E. J. Charlton has withdrawn from our *joint* tender to build said section 15, Canadian Pacific Railway. His withdrawal was without my knowledge of consent.

"I am prepared to deposit the security required by the Government, and am prepared to perform the work mentioned in or contemplated by said tender. And I now offer to comply with the conditions and requirements of the Government, as specified in the advertisement calling for tenders for said work, and in our said tender ; and I protest against any and all acts depriving me of said contract.

"Trusting that justice will be done me in the premises,

"I have the honour to be, Sir,

"Most respectfully yours,

"PATRICK MARTIN."

"To the Honourable the Minister of

"Public Works of Canada, Ottawa."

"(Memorandum.)

"30th December, 1876.

"The undersigned reports that tenders having been invited for construction of section No. 15, Canadian Pacific Railway, twenty-one have been received at schedule rates, which, when extended, are found to vary between \$1,443,175 and \$2,950,000.

"That the firms whose tenders are first and second lowest respectively, Messrs. McDonald & Kane, and Messrs. Martin & Charlton, are unable to furnish the necessary security.

"That the third lowest tender is from Messrs. Sutton & Thompson, of Brantford, amounting to \$1,594,155 (one million five hundred and ninety-four thousand one hundred and fifty-five dollars).

"That this firm are prepared to make the necessary 5 per cent. cash deposit, and propose to associate with themselves Mr. Joseph Whitehead, contractor, of Clinton, Ontario.

"The undersigned, therefore, recommends that the tender of Messrs. Sutton & Thompson be accepted, and that they be allowed to associate Mr. Whitehead with themselves accordingly.

"Respectfully submitted,

"A. MACKENZIE,

"Minister of Public Works."

"OTTAWA, 5th January, 1877.

"I am directed by the Minister of Public Works to say that the Department has been informed by parties interested that the firm of Sutton & Thompson, or some persons acting on their behalf, have paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for the construction of section 15 of the Canadian Pacific Railway, and to ask if there is any truth in this statement.

"F. BRAUN.

"Messrs. SUTTON & THOMPSON,

"Brantford, Ont."

"(Memorandum.)

"6th January, 1877.

"The undersigned reports for the information of Council, the following facts regarding contract 15 of the Canadian Pacific Railway :—

"Tenders were received for this contract on the 20th September, and as soon as possible afterwards, Messrs. McDonald & Kane, the lowest tenderers were notified of the acceptance of their offer of \$1,443,175. On the 13th of October they asked for certain changes to be made which would involve a further and indefinite expenditure by the Government.

"The Department declined to accede to this request, and on the 16th October they notified the Department that they were not prepared to proceed any further.

"On the 17th October, Messrs. Charlton & Martin, who were the second lowest, were notified that their tender of \$1,562,090 was accepted, and they were called upon to make immediate arrangements for depositing 5 per cent. as security. On the 27th October they made tender of a mortgage on certain timber limits; on the 28th October they were notified that these securities could not be accepted, and that no further delay could be permitted.

On the 16th November, Messrs. Charlton & Co. offered mortgages upon certain property as security, and on the 21st November a lithographed plan of the property so offered, with a certificate of valuation of the same, representing it to be worth \$83,250, was sent to the Department. On the 22nd November these mortgages and this plan were transmitted to Messrs. Darling & Valois, the Government valuers in Montreal, with instructions to ascertain the cash value of the property, exclusive of the encumbrances upon it. On the 28th November Messrs. Darling & Valois reported that this property, if sold, would not realize more than about \$30,000. The Department accordingly declined to accept these mortgages on the ground of their insufficiency, and Messrs. Charlton & Co. were so notified on the 29th November. On the same day Charlton & Co. intimated to Messrs. Darling & Valois that they would offer additional security, and wrote to the Department on the 4th December to say that their securities would be completed on the 10th December. On the 11th December a firm from New York, named Baird, Arnold & Stephenson, made a cash deposit of \$20,000 for Charlton & Co., and promised to make good the remainder of the required security. The remainder

was never, however, lodged either in cash or in mortgages which could be accepted, and on the 21st December Mr. Charlton wrote withdrawing the tender.

"On the 28th December, Messrs. Baird & Co., of New York, wrote, complaining that Charlton had used them shamefully; that they had gone to Montreal to meet him, and had staid there three days, but had been unable to find him, and they asked to be allowed to lodge cash security and to take the contract themselves; in accordance with the terms of Messrs. Charlton & Co.'s tender. It being contrary to proper practice and to the custom of the Department to allow such a proceeding, their request was not acceded to.

"On the 28th December Messrs. Sutton & Thompson, the third lowest, were notified that their tender of \$1,594,085 was accepted, and were required to deposit the necessary security. On the 29th December, P. Martin, one of Charlton's partners, lodged a protest against Charlton being allowed to withdraw his tender, and stated that it was done without his knowledge, and that he (Martin) was prepared to proceed. On the 30th December the Honourable Donald McDonald, Senator, presented a letter to the Department from Messrs. Sutton & Thompson, in which they asked to be allowed to associate Mr. Joseph Whitehead with them in the contract. Mr. McDonald, at the same time, deposited \$80,000 by his cheque, accompanied by a letter from the Honourable A. Campbell, stating that the cheque would be accepted upon the Consolidated Bank of Canada as security for the firm of Messrs. Sutton & Thompson; and was informed that the contract must be completed with the firm of Messrs. Sutton & Thompson, the original tenderers, and the deposit made in their name until it was so completed. On the same day, a contract was drafted and submitted to the Minister of Justice. When in the Department of Public Works on the morning of the 30th December, Mr. McDonald's attention was called to a statement in a newspaper of the previous day to the effect "he or Whitehead, on behalf of Sutton & Thompson, has paid Charlton a sum of money to withdraw his tender," when he stated that the report was entirely devoid of truth.

"On the 5th January, the following telegram was addressed to the firm of Messrs. Sutton & Thompson:

'Messrs. SUTTON & THOMPSON,

'Brantford, Ontario:

'OTTAWA, 5th January, 1877.

'I am directed by the Minister of Public Works to say that the Department has been informed by parties interested that the firm of Sutton & Thompson, or some person acting on their behalf, has paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for the construction of section 15 of the Canadian Pacific Railway; and to ask if there is any truth in this matter.

'F. BRAUN,

'Secretary.'

"On the morning of the 6th January, the following reply was received:—

(Private)

'OTTAWA, 6th January, 1877.

'By telegraph from Brantford, 6th, to F. BRAUN, Esq., Secretary of Public Works Department.

'No truth whatever in the statement that we, or any person on our behalf, paid Charlton & Co., or Mr. Charlton individually, a sum of money for withdrawing their tender for construction of section fifteen of the Canadian Pacific Railway.

'SUTTON & THOMPSON.'

" It is not necessary to consider the effect which the Government might be disposed to give the circumstances alleged, if they proved to be true, as the pointed denial given by Messrs. Sutton & Thompson and by the Honourable Donald McDonald, leaves the Government free to act upon the rule which governs the letting of contracts. That rule has invariably been, when the lowest tender withdraws, to pass on to the next.

" The letter of Mr. Martin, one of the principals of the firm of Messrs, Charlton & Co., already referred to, contains a statement that he is prepared to proceed to give the necessary security. But he did not tender any security, and as he had been given the opportunity for two months to do so, it would have been evidently useless to wait longer on his account, setting aside altogether the matter of the rupture of the firm of which he was a member.

" The undersigned recommends, for the reasons assigned, that the contract be awarded to Messrs. Sutton & Thompson, as the next lowest tenderers for the work, and that they be allowed to associate Mr. Joseph Whitehead with them in the contract.

" Respectfully submitted,

" A. MACKENZIE,

" Minister of Public Works."

" COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 8th January, 1877.

" The Committee of the Privy Council have attentively considered the memorandum dated 6th January, 1877, from the Hon. the Minister of Public Works, having reference to the awarding of the contract for No. 15 section of the Canadian Pacific Railway; and, for the reasons therein given, they respectfully advise that the tender of Messrs. Sutton & Thompson, for the sum of \$1,594,085 be accepted, and that the contract be awarded to that firm, and they be allowed to associate Mr. Joseph Whitehead with them in the contract.

" Certified.

" W. A. HIMSWORTH,

" To the Honourable

" The Minister of Public Works."

Before signing the contract the Hon. Mr. McDonald, his son Mr. Mitchell McDonald, and Mr. Whitehead were together at Toronto, and it was then arranged that Mr. Mitchell McDonald was to be a partner in the contract. Mr. Mitchell McDonald was neither a railway man nor a wealthy man, and Mr. Whitehead, in giving evidence, said that he supposed he was selected because his father being in the Senate could not take the partnership himself, and this way was taken "to secure the benefit of it by giving the son the partnership." The contract was executed by Messrs. Sutton and Thompson and Whitehead. It had been previously arranged that Messrs. Sutton & Thompson were only to lend their names, and that Mr. McDonald and Mr. Whitehead were to get them released as soon as possible afterwards, and to indemnify them against any liability in the interval. At the execution of the contract Mr. McDonald paid to Sutton, who was

authorized to act on behalf of Messrs. Sutton & Thompson, the sum of \$10,000, for having withdrawn from the position held by them under their tender. Subsequently, Mr. Mitchell McDonald entered into writings by which the partnership between himself and Mr. Whitehead was to be dissolved, Mr. Whitehead promising him as full satisfaction for his claim on the profits \$112,000, out of which amount he then got \$20,000 by a warrant from the Department. The Hon. Mr. McDonald was ill at the time, but Mr. Whitehead afterwards saw the warrant in his hands. Mr. Whitehead understood afterwards that the elder Mr. McDonald was not satisfied at the dissolution of the partnership, and testified that, "Mitchell wrote a deed and put things back as they were."

We have not considered it necessary to examine closely into the question whether in this arrangement Mr. Mitchell McDonald was the party substantially interested, or was a trustee for his father, for the reason that the fact of either of them being a partner with Mr. Whitehead, or interested in the profits of the contract, has not been brought home to anyone connected with the Department.

Mr. Mackenzie testified to the effect that he was not aware at the time of signing the contract that any parties who had withdrawn their tenders had been paid for so doing, or that Mr. Senator McDonald, or his son, was interested in the contract; or that Sutton & Thompson were only lending their names as parties to the contract.

Upon the evidence we conclude that in obtaining this contract the contractors obtained an undue advantage, *i.e.*, the withdrawal of lower tenderers by collusion with them; that the action of the Department in awarding the contract was taken in ignorance of the facts either as to the parties really interested, or as to the collusion which had been practised between them and the lower tenderers.

Subsequently Messrs. Sutton & Thompson were allowed to withdraw from the position of contractors, the change being authorized by an Order in Council. This was done with such consent as prevented the discharge of the security which had been previously given by the Honourable Mr. McDonald for the due fulfilment of the contract, to the extent of \$80,000. This security had been originally in cash, but in its place landed security to the same extent was afterwards substituted.

Work was commenced by the contractor on this section in February, 1877. Changes in the character of the work were made almost continuously

and gradually from that time forward. In June following a material change was made by lowering the grade of the line. In the fall of that year other material changes were made. It was found that more earth was available for embankment than had been at first supposed. The contractor was permitted to prepare a rock basis or rock protection walls, as for solid earth embankments, instead of for trestle work with which it had been originally intended to fill the voids. In the prices attached to Sutton & Thompson's tender, those for rock work and earth work were high; that for timber work was low. Therefore, the changes above mentioned were in the direction of making the contract a more profitable one. These changes not only increased the profits in proportion to the whole receipts for the work, but they increased largely the amount to be expended on the contract. After this excess over the original estimate reached a formidable sum, the matter was investigated by Parliamentary Committees, before whom considerable evidence was taken, one of the main objects being, apparently, to discover the authority, if any, by which the expensive changes had been directed. It appeared that Mr. Fleming and Mr. Mackenzie had discussed the matter, Mr. Fleming recommending the change, and Mr. Mackenzie expressing himself favourable to it. Mr. Mackenzie had submitted to the Privy Council a report of the facts, and the matter was left for further consideration; he did not recommend immediate action, and none was taken. This appears by his evidence before the Committee of the Senate in April, 1879. Mr. Fleming, between the time of his recommendation and this report to the Privy Council, left Canada for England. In the Department, month after month progress estimates came in, showing that the original estimates were being largely exceeded, but no objection was made on that account.

Different views have been expressed by different engineers before the Committees, and before us, as to the effect of the changes on the final cost of the work. We have investigated the bearings of these opinions and analyzed the evidence upon the subject. We think, upon the whole, that the variation from the character of the work as originally intended, caused an increase of expenditure to a sum in the neighbourhood of \$250,000. We have remarked upon this in our report on "Engineering," but we have not thought it necessary to report more accurately upon the excess in the cost caused by the change. Mr. Fleming subsequently renewed his report in favour of the changes as they had been adopted in the progress of the work, and stated that the contractor had obtained a large amount of rolling-stock and plant,

which would not have been required, but for the purpose of carrying out these changes.

An Order in Council was passed confirming them, and to the same effect as the report which had been originally submitted by Mr. Mackenzie when Minister of Public Works.

During the investigation of matters connected with this contract before the Standing Committee on Public Accounts, above referred to, Mr. Whitehead was in Ottawa. He had not been examined before the Committee, but he understood from Mr. Chas. H. Mackintosh that there was "something about the contract going on" before the Committee, and it was supposed that the contractors for section B (which was the one next east of section 15) wanted to get this contract out of Mr. Whitehead's hands, and he was not willing that it should be taken from him.

Upon one occasion when this matter was the subject of conversation between them, Mr. Whitehead gave to Mr. Mackintosh promissory notes to the amount of \$11,000 or \$12,000.

The evidence upon the subject of the inducement offered to Mr. Whitehead to give these promissory notes, is conflicting, and we do not consider it material to our enquiry to decide what that was then stated to be, as that is an affair between those two persons alone ; but we deem the object of the transaction to be a matter of public interest, if either of them intended the notes to be used, in obtaining any improper advantage for this contractor.

Upon the evidence we find that Mr. Whitehead gave to Mr. Mackintosh promissory notes amounting to \$11,000 or \$12,000, expecting and intending that they should be used to influence one or more members of Parliament, and so to secure for him some advantage concerning this contract, which, but for giving these notes, he thought he would not be likely to procure. We have felt it our duty to ascertain whether his expectations were realized. We have examined Mr. Mackintosh, as well as members of Parliament who were then acting on the Committee of Public Accounts, including one whose name Mr. Whitehead said was mentioned as exerting himself adversely to him.

We conclude upon the evidence on this subject, that no part of the proceeds of the said notes, or any other money given by Mr. Whitehead to Mr. Mackintosh had the effect of, or was used for the purpose of obtaining for

Mr. Whitehead, or for any other person, any advantage concerning this contract, or any other matter connected with this railway. The notes were at first discounted by Mr. Mackintosh. They were subsequently retired by him, and eventually returned to Mr. Whitehead. On other occasions considerable sums of money or notes changed hands from Mr. Whitehead to Mr. Mackintosh, under circumstances which we found, on investigation, not to affect the public interests, and we do not think it necessary further to allude to them.

While Mr. Whitehead was carrying on this contract he became unable to meet his financial engagements, and obtained some assistance from the Government both by releases, from time to time, of portions of the drawback which had been, under the terms of the contract, left in the hands of the Government out of moneys earned by him, and also by money advances on two occasions, which were, however, sufficiently secured by assignments from him of plant and machinery. We have inquired into the particulars of these transactions.

On one occasion, not getting such assistance from the Government as he had applied for, he arranged with Messrs. Fraser & Grant to become partners with him in his contract, to supply the necessary funds to relieve him from his embarrassments, and carry on the works with less difficulty than he had experienced, while depending on his own resources. Writings between these parties were entered into to that effect. The arrangement, however, was not effectual. The new partners were, according to Mr. Whitehead's account, not so able to provide funds as he had expected, and the Government declined to change the parties to the contract lest it should have the effect of releasing some of the securities.

The transactions of Mr. Whitehead, in relation to this contract, as described in his own testimony, made it apparent to us that he had a strong belief in the corruptibility of public men. We have taken evidence at some length concerning the dealings between the Government and him while he was carrying on this contract, with a view of ascertaining whether he had obtained any favours by improper means, or otherwise, at the expense of the public. The evidence on this subject leads us to conclude that since the execution of the contract, no influence had been exercised on his behalf more effective than his own representations were or would have been, and that he has not gained from the Department or any member of Parliament or any engineer, or any other person in the Government employ, an advantage that was not consistent with the best interests of the country.

He was not permitted to complete the works. In 1880 it was found, as he himself states, that he could not supply provisions for the men, or pay the wages due by him, and that the work was, therefore, not being prosecuted with vigour. This, without any disagreement on his part, induced the Government to take charge of the construction and to use his plant and machinery, engaging the laborers and others employed on the works, since which time the work has been carried on at the expense of the contractor, the Government in the first place advancing the necessary funds.

This arrangement will not result in any loss to the Government. The work provided for in the contract was not complete at the date of our commission.

The following sums have been paid on it up to the 30th June, 1880 :—

30th June, 1877.....	\$54,300
“ 1878.....	532,200
“ 1879.....	877,700
“ 1880.....	411,680
	<hr/>
	\$1,875,880

CONTRACT NO. 16.

Railway Extension.

This concerns a subsidy from the Government to the Canada Central Railway Company, to be paid for the extension of a line of railway from the eastern terminus of that portion of the Canadian Pacific Railway known as the Georgian Bay Branch to the town of Pembroke. The existing arrangement was substituted for an earlier one which was also known by this same No. 16. That was for the extension between termini and over a route different from those covered by the present agreement.

The Canadian Pacific Railway Act of 1874, contained, amongst others, the following enactments :—

“ 14. The Governor in Council may also grant such bonus or bonuses, subsidy or subsidies, to any company or companies already incorporated or to be hereafter incorporated, not exceeding twelve thousand dollars per mile, as will secure the construction of the branch lines extending from the eastern terminus of the said Canadian Pacific Railway to connect with existing or proposed lines of railway ; the granting of such bonuses or subsidies to be subject to such conditions for securing the running powers and other rights over and with respect to the whole or any portion of the said branch railway, to the owners or lessors of the main line

of the said railway or of any section thereof, or to the owners or lessees of any other railway connecting with the said branch railway, as the Governor in Council may determine; but every Order in Council granting such subsidy shall be laid before the House of Commons for its ratification or rejection, and shall only be operative after its ratification by resolution of the House.

"15. The Governor in Council may, at any time after the construction of the said branch railway, make with the company or companies owning any portion of the said branch railway, such arrangement for leasing to such company or companies any portion of the said branch railway which may belong to the Government, on such terms and conditions as may be agreed upon—such lease not to exceed a term of ten years; and may also make such other arrangements as may be deemed advantageous for working the said railway in connection with that portion of the said branch railway belonging to such company or companies: Provided no such contract for leasing the said branch railway, and no such agreement for working the said railway in connection with any other railway, shall be binding until it shall have been laid before the House of Commons for one month without being disapproved, unless sooner approved by a resolution of the House."

In the summer of 1874, at the request of the Minister of Public Works, the Chief Engineer instructed a reconnoissance of the country between the mouth of French River, on Georgian Bay, at the west, and Pembroke and Renfrew respectively at the east, to be made under Mr. Hazlewood. While this examination was in progress, the following memorial was presented to the Government by the Canada Central Railway:—

"To His Excellency the Governor-General of Canada in Council assembled.

"The Memorial of the Canada Central Railway Company, humbly sheweth,—

"That in the year 1861 your Memorialists were incorporated with power to construct a railway from the city of Ottawa to Lake Huron. The Legislature of Canada deeming the opening up of the Ottawa Valley by railway communication, and the extension of a line to Lake Huron, a work of such public importance that to stimulate its construction a large land grant was offered to the Company to aid in the building of the road;

"That the Company were unable to avail themselves of the offer of the subsidy, and build the railway within the time limited for its construction, and the grant, therefore, lapsed, except for a short section, to Carleton Place, from which point an extension to the village of Renfrew has been completed and is now in successful operation;

"That your Memorialists were, in the year 1872, allotted a subsidy of \$2,650 per mile by the Ontario Government, to encourage the building of the line through the county of Renfrew towards Pembroke.

"The country west of Renfrew village being but sparsely settled, the Company has been unable to receive that substantial aid which it might fairly expect from the great public advantages naturally flowing from the development through railway enterprise of that important section of Canada;

"That the eastern terminus of the Canadian Pacific Railway is on the line of the route which the Canada Central was authorized to construct in reaching Lake Huron;

"That with the subsidy of \$12,000 per mile, proposed to be given under the Canadian Pacific Railway Act, to a Company capable of constructing a railway to connect with existing or proposed lines, your Memorialists believe they can complete their extension to the eastern terminus of the Canadian Pacific Railway as soon as the branch railway authorized by the said Act has been built ; your Memorialists would therefore pray that an Order in Council be passed granting the subsidy of \$12,000 per mile from the village of Renfrew to the eastern terminus of the Canadian Pacific Railway, subject to the provisions prescribed in the 14th section of the said Act.

"(Signed) H. L. REDHEAD,
" President of the Canada Central Railway Company.

"OTTAWA, August 22nd, 1874."

No definite action was taken upon this memorial until after a report of the 6th October, 1874, by the Chief Engineer, which is set out in full (see contract 12), and from which it was assumed that certain grades and conditions might be specified as feasible over a route from a point then fixed upon as the eastern terminus of the Georgian Bay Branch, and extending eastward to the village of Douglas, in the valley of the Bonnechere River.

On the 4th November, 1874, the following Order in Council was passed :—

"Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 4th November, 1874.

"The Committee of Council have had under consideration the application of the Canada Central Railway Company, for the subsidy proposed to be granted to Railway Companies under the terms of the Act 37th Vic., Cap. 14, intituled 'An Act to provide for the construction of the Canadian Pacific Railway,' and they advise that a subsidy of \$12,000 per mile be granted to the said Company to aid in constructing their line from the vicinity of the village of Douglas, westward, to the eastern end of the Branch Railway, proposed to be built from Georgian Bay by the Government, being about one hundred and twenty miles, upon and subject to the following conditions, namely :—

"1st. That the road shall be built upon a line to be approved by the Minister of Public Works, but which may be defined generally as ascending the valley of the Bonnechere, from the vicinity of the village of Douglas *via* Golden Lake and Round Lake, thence by as direct a line as may be found to Burnt Lake, and thence to the proposed terminus of the Government Railway, at about the eighty-fifth mile from Georgian Bay.

"2nd. That the Company shall, within one month from the ratification of this Order in Council by the House of Commons, satisfy the Minister of Public Works that they have entered into a *bonâ fide* contract or contracts for the building of the Railway, and have provided sufficient means with the Government bonus to secure the completion of the line on or before the first day of January, 1877, and also that the Company shall, from the date of such contracts, make continuously such progress as will justify the hope of the completion of the line within the time mentioned.

"3rd. That the Company shall enter into an agreement to grant running powers, on terms to be approved by the Governor in Council, to the Northern Colonization Railway Company,

and the Kingston and Pembroke Railway Company, from the point of intersection of their respective lines, provided such point of intersection is on the subsidized line or within five miles of the same, and also to such other Companies as may have the termini of their systems on or towards Lake Huron, and may be designated or approved by the Governor in Council as entitled to such running powers, provided that the terms of such running powers may be mutually agreed upon by the Canada Central Railway Company and the other Companies named, and, in the event of a disagreement, the conditions shall be settled by arbitration, one arbitrator to be selected by each Company and one by the Governor in Council.

"4th. The Government, or lessees of the Government line from Georgian Bay to the Western terminus of the subsidized line, or any future owners of said line, shall possess running powers on said railway on similar terms to the Companies designated.

"5th. That payment of the subsidy shall only be made on the completion of the railway in sections of not less than twenty miles, each payment to be made on the certificate of an engineer, to be appointed by the Government, that a section or sections has or have been completed; payment may, however, be made of an amount equal to the subsidy on twenty miles on work extended over a larger distance, which in value will be equivalent to not less than twenty-five miles of finished roadway; payment will also be made on rails delivered at any point of the line to be constructed to the extent of seventy-five per cent. of the value thereof, such rails to become the property of the Government until they are laid on the road for use.

"The grant to be operative only after the ratification of this Order in Council by resolution of the House of Commons.

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council.

This Order in Council was ratified on the 13th March, 1875, by a resolution of the House of Commons, which fact was, on the 27th of the same month, communicated, by the Secretary of the Department, to the Canada Central Railway Company.

On the 24th March, 1875, that company had transmitted to the Department of Public Works a copy of a contract, dated the day before, and made between the said company of the one part, and the Hon. A. B. Foster of the other part, having for its object the construction and equipment on or before the 1st January, 1877, of a single line of railway from the eastern terminus of the said Georgian Bay Branch to the terminus of the Canada Central Railway, at Renfrew Village; and in all respects, according to, and in compliance with, the said Order in Council of the 4th November, 1874. This contract is printed in full in a return to the House of Commons, dated 27th April, 1877.

It will be noticed that the contract between the company and Mr. Foster included the whole distance to Renfrew Village, which was some

miles beyond Douglas, the terminus of the line covered by the arrangement between the Government and the Canada Central Railway Company.

During the season of 1875 Mr. Foster, who was also the contractor with the Government for the construction of the Georgian Bay Branch (contract No. 12), put surveying parties in the field, with a view of locating a line from the mouth of French River, the western end of Georgian Bay Branch, to Douglas, the eastern terminus named in the above Order in Council.

In the contract between Mr. Foster and the Government concerning the Georgian Bay Branch, the maximum grades ascending easterly were specified at one in 200, or 26 40 feet per mile. No grades were actually specified either in the Order in Council concerning this extension, or in the contract between Mr. Foster and the Canada Central Railway Co., but it seems to have been taken for granted that the same maximum grade was applicable to the arrangement concerning this extension.

In a report by the Chief Engineer on the 23rd December, 1875, concerning an application by Mr. Foster for a modification of the grades and curves, he alludes to those defined by the contract for the Georgian Bay Branch, and remarks that they were intended to apply equally to the Canada Central extension. Apparently, in the expectation that this arrangement would be carried to completion, Mr. Foster had procured a quantity of rails to be used on the extension from Douglas westward, and they were, in the season of 1875, deposited at Renfrew, from which point he had, as before mentioned, contracted with the Canada Central Railway Co. to build a railroad westward. This was several miles east of Douglas, the terminus of the line included in the arrangement with the Government for a subsidy. On these rails the Government made advances to Mr. Foster as follows :—

25th September, 1875.....	\$23,000
27th October, 1875.....	45,000
	<hr/>
	\$68,000

This advance was subsequently assumed by Messrs. McIntyre & Worthington, the present contractors, by a communication of the 15th July, 1878, which is hereinafter set out.

In the fall of 1875 Mr. Foster represented to the Government that the specified conditions as to the grades over the extension were not likely to be

obtained, and he transmitted a report from his engineer to himself relating principally to this subject, dated 26th October, 1875, in which Mr. Shanly shows that, in some places on the line, only heavy work could secure grades even as good as 70 to 80 feet per mile and curves of 60.

This was the beginning of correspondence and proceedings, which led finally to the abandonment of the line described in the first contract for this extension, and the adoption of another covered by the contract now in force.

We do not think it necessary to set out these steps in full. All that are material are printed in a Return to the House of Commons, dated 26th March, 1877, (Sessional Papers, No. 57.) A short description of them, however, will not be out of place.

Mr. Shanly's report above mentioned was referred to the Chief Engineer. He remarked upon it under date of 17th November, declining to adopt Mr. Shanly's opinions, and advising that the contractors should carry on the surveys with every possible energy, until a line within the terms of the contract should be found.

On 23rd November, the Secretary of the Department notified Mr. Foster to that effect.

On 27th November, Mr. Foster answered that a survey was going on as fast as practicable and that he had had four parties out most of the time from the May previous.

On the 20th December, 1875, Mr. Foster again addressed the Department, setting out difficulties, which seemed to him insurmountable, and asking for modifications of his contract.

This was also referred to Mr. Fleming, and he reported on it on 23rd December, 1875, stating in relation to the principal trouble mentioned by Mr. Foster, that he (Mr. Fleming) had seen nothing as yet to show the necessity of abandoning the grades and curves defined by the contract for the Georgian Bay Branch, and intended to apply equally to the Canada Central extension.

In February, 1876, a correspondence ensued, in which Mr. Fleming enquired, and Mr. Foster stated, the arrangements which had been made for proceeding under the contracts then in force concerning the Georgian Bay Branch and this extension.

On 28th February, 1876, an Order in Council was passed authorizing the cancellation of the contract concerning the Georgian Bay Branch, and

alluding to the application of Mr. Foster to have this one modified, as a matter upon which the Minister would subsequently report.

On 23rd March, 1876, Mr. Foster again addressed the Department in the following letter, which is the first suggestion on record of a new route for the subsidized extension.

OTTAWA, 23rd March, 1876.

"Sir,—Since my communication to you on the 20th December, in reference to the line of the Georgian Bay Branch and Canada Central Railway, my engineers have been continuously at work in exploring and surveying the country between Douglas and French River.

"I now beg leave to give you the result.

"The shortest possible line between Renfrew and the Amable du Fond is (132) one hundred and thirty-two miles, and from that point to the mouth of French River (105) one hundred and five miles.

"I enclose a letter from Mr. Shanly expressing his doubt as to the possibility of obtaining a practicable line on the route originally contemplated.

"I propose the exploration of the country between Pembroke and Lake Nipissing.

"I hope the suggestion will meet with the approval of the Government.

"I propose to send out an engineering party immediately to ascertain the character of the country and length of that line, and would like the Government to send an engineer with the party, who would make an independent report for the information of the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"A. B. FOSTER.

"The Hon. Minister of Public Works,

"Ottawa."

On the 6th April, 1876, the Secretary of the Department informed Mr. Foster that his application on this matter would receive due consideration, after which, the next communication on the subject we record, is nine months later, as follows:—

"OTTAWA, January, 1877.

"Sir, Owing to important reasons that affect the Canada Central Railway very seriously, but which it is not necessary to discuss in this communication, it is imperatively necessary that I should be at once informed as to the decision of the Government on my proposal to alter the line of the Canada Central Railway, by continuing the extension westward from Pembroke instead of from Douglas. Acting on the belief that the Government preferred the route up the Bonnechere Valley, I spent nearly two years in the effort to locate a line of railway by which the Canada Central could be extended in that direction, to the proposed eastern terminus of the Canadian Pacific Railway. After, however, an expenditure of \$35,000 (thirty-five thousand dollars), I have been reluctantly forced to the conclusion that a line with curves and gradients, such as a first-class road ought to possess, cannot be obtained by that route; moreover, after the first fifty miles, the country is so uninviting as to dispel the hope that settlement would follow the construction of the road. Acting on the advice of the Chief Engineer of the Company, Mr. Walter Shanly, I despatched a party under the immediate

charge of Mr. William Murdoch, C.E., to examine and report on the route between Pembroke and Nipissing. I had the honour to transmit to your Department, in June last, a copy of Mr. Murdoch's report; it confirmed the opinion that Mr. Shanly had previously expressed, that the extension *viâ* Pembroke possessed so many advantages over the other route as to make its selection a necessity in the interest of the Company; lying nearer the valleys of the Ottawa and Mattawan the country is so much lower than by the Bonnechere route, and less broken by hills, with fewer lakes to avoid, the land seems better adapted to support an agricultural population. This is evidenced by the fact that settlements on the Ottawa are rapidly extending westward towards the Mattawan—the latter point is now a thriving village; the settlements are also increasing between it and Lake Nipissing. It is now admitted that the Quebec system of railways will shortly be completed from Quebec to Aylmer. The extension of the Canada Central Railway up the valley of the Ottawa, in close proximity to the Province of Quebec, will permit an easy connection at Portage du Fort, or even further west, in the event of an extension in that Province. Mr. Shanly is also of opinion that the distance either to the south-east corner of Lake Nipissing or to Contin's Bay, on French River, is about the same by Pembroke as by the Bonnechere; and that the elevations are more favourable. Mr. Harris and Mr. Murdoch, the other engineers employed by the Company, concur in this opinion.

"In view of all these facts it is evident that the true interests of the country, and also of the Company, will be better served by the construction of the railway from Pembroke rather than Douglas.

"I propose to build the Canada Central Railway to the south-eastern corner of Lake Nipissing, the Government granting the subsidy for an equal number of miles as proposed from Douglas, namely, 120.

"If it is thought best in the public interest, instead of the Government constructing a line from the south-east end of Lake Nipissing to Contin's Bay, I would undertake to extend the Canada Central to the latter point on the payment of a subsidy of \$20,000 a mile, for that portion between Lake Nipissing and Contin's Bay; the road to be in every respect equal to the newly built portion of the Canada Central between Renfrew and Pembroke.

"The railway to be completed within five years.

"You will much oblige by giving me an answer as early as possible.

"I have the honour to be,

"Your obedient servant,

"A. B. FOSTER."

This was followed by a formal communication from the Canada Central Railway Company, as shown below :—

"OTTAWA, 10th February, 1877.

"SIR,—In November, 1874, the subsidy of \$12,000 a mile was granted to the Canada Central Railway Company to connect its line with the eastern terminus of the Canadian Pacific Railway, under the authority of the Act for the construction of the Canadian Pacific Railway. The route then proposed was westward from the village of Douglas by the valley of the Bonnechere. Early in the spring of 1875 the Company despatched a staff of surveyors and engineers to explore the country and locate the line for the railway, and although the first fifty miles proved favourable, the country further west was found to be intersected by

hills and ridges with considerable bodies of water, and altogether unsuited for a line with the curves and gradients of a first-class road.

"After an expenditure of upwards of \$35,009 the Company have been compelled to abandon the extension of the road on that line.

"Acting on the advice of W. Shanly, Esq., Chief Engineer of the Company, an exploratory survey was last year made under the immediate charge of Mr. Wm. Murdoch, C.E., of the country lying between Pembroke and Lake Nipissing. The result of the exploration confirmed the opinion that Mr. Shanly had previously expressed, that the extension *via* Pembroke possessed so many advantages over the other route as to make the selection a necessity in the interest of the Company; following the valley of the Ottawa, the country is much lower than by the Bonnechere and less broken by hills.

"It is now apparent that the Quebec system of railways will shortly be completed from Quebec to Aylmer, and it is contemplated to extend the Quebec Railway line to Portage du Fort, or some other point further west.

"The extension of the Canada Central Railway up the valley of the Ottawa in close proximity to the Province of Quebec, will permit of easy connection either at Portage du Fort or at such other point as may be considered desirable.

"It is the opinion of Mr. Shanly that the distance from Renfrew to Lake Nipissing is not materially increased by the adoption of the northern over the southern line. Mr. Harris and Mr. Murdoch, the other engineers employed by the Company, concur in this opinion. In view of all these facts it is evident that the true interest of the country and also of the Company, will be better served by the construction of the Railway from Pembroke, rather than from Douglas.

"The Company now propose to extend the Canada Central Railway to that point where the South River enters Lake Nipissing, being the outlet of the Nipissing road, the Government granting the subsidy for an equal number of miles as was proposed from Douglas; this will carry the railway line nearly twenty miles further than the point originally settled as the eastern terminus of the Canadian Pacific Railway, and thus save a proportionate mileage on that line.

"Under the original Order in Council granting the subsidy, the Company was bound to grant running powers, on terms to be approved by the Governor in Council, to the Northern Colonization Railway Company with the Kingston and Pembroke Railway Company, from the point of intersection of their respective lines, provided such point of intersection was on the subsidized line, or within five miles of the same; in the case of the former Company the connection, five miles east of Douglas, would involve the construction of about eleven miles of road. The Canada Central is willing to concede to that railway the privilege of running powers at any point of intersection opposite Portage du Fort, thus shortening, by about eleven miles, the proposed connecting line; it is also willing to enter into an agreement with the Kingston and Pembroke Railway, to grant running powers from the village of Renfrew or any other point further west.

"The Company request that payment of the subsidy shall be made on the basis of 80 per cent. of the expenditure, the drawback of 20 per cent. to be paid on the completion of every ten miles, the line to be completed in three years. The provision for the advance on rails to

be similar to that contained in the former Order in Council, namely, 75 per cent. when delivered.

"I have the honour to be, Sir,

"Your most obedient servant,

"J. W. READ,

"Vice President C. C. Railway.

"The Honourable

"The Minister of Public Works."

This having been submitted to the Chief Engineer, he made the following report:—

"OTTAWA, 16th, February 1877.

"Sir,—I have the honour to report on the proposal, made by the Canada Central Railway Company, in the communication addressed to you, of date 10th instant.

"I do not altogether concur with the view expressed as to the impossibility of finding a line and building a first-class railway, on the route originally laid down, by the valley of the Bonnechere.

"It is due, I think, to an officer on my staff, Mr. Hazlewood, to state that the surveys which have since been made substantially confirm the report, on the reconnaissance which he made in 1874. He was instructed to walk over the ground and report if it would be practicable to build a railway, across the country, in a direct course. On his return, he reported that he felt 'quite safe in stating, that a railway could be located, on a direct course, between the mouth of French River and Burnt Lake; in fact, that the departure from a straight line would probably not increase the distance more than five per cent.'

"He further reported on the character of the country between Burnt Lake and Renfrew, *via* the Valley of the Bonnechere River, and expressed the opinion, that there would not be any great difficulty in finding a practicable route for the railway.

"While I have as yet seen nothing to alter my own views with respect to the general accuracy of Mr. Hazlewood's report; I am satisfied that there are no engineering objections to the proposal now submitted by the Canada Central Company, to extend the line westerly from Pembroke, instead of from Renfrew.

"Indeed the information obtained goes to show, that a line with more favourable gradients may be obtained on the route now proposed to be adopted by the Canada Central, and that it will serve the interest of the country fully as well. I have, therefore, no hesitation in recommending that the proposal be favourably entertained.

"I think it would be well to stipulate with the Canada Central Company that the gradients ascending westerly may be as high as 52.80 per mile, but that the maximum ascending in the opposite direction should be 26.40 per mile; and that the curvature and general alignment should be approved by the Department.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING.

"The Hon. A. MACKENZIE,

"Minister of Public Works."

On the 18th April the following Order in Council was passed:—

“ Report of a Committee of the Hon. the Privy Council, approved by His Excellency the Governor General in Council, on the 18th April, 1878, which is as follows:—

“ The Committee of the Privy Council have had under consideration the questions relating to the construction of the Georgian Bay Branch of the Canadian Pacific Railway, and the extension westward of the Canada Central Railway, in consideration of a subsidy to be paid by the Government, as provided by the Canadian Pacific Railway Act of 1874.

“ That a contract was entered into in 1874, with Mr. A. B. Foster, for the building of the Georgian Bay Branch, under which Mr. Foster was to execute all the surveys, as well as perform the work of construction from the mouth of the French River, 85 miles eastward.

“ That on the 28th February, 1876, this contract was annulled, and Mr. Foster was paid such portions of his expenditures on the surveys, as were reported by the Chief Engineer to be serviceable to the Department, in completing the survey.

“ That on the 4th November, 1874, an Order in Council was passed, under the terms of the Act 37 Vic., cap. 14, known as the Canadian Pacific Railway Act of 1874, whereby a subsidy of \$12,000 per mile was granted to the Canada Central Railway Company, for a distance not exceeding 120 miles from the eastern end of the Georgian Bay Branch above referred to, upon the conditions:—

“ 1st. That the road should be built upon a line to be approved by the Minister of Public Works, but which was defined generally, as ascending the valley of the Bonnochère from the vicinity of Douglas Village, *via* Golden Lake and Round Lake, and thence by as direct a line as might be found, to Burnt Lake, and thence to the proposed terminus of the Georgian Bay Branch—about the 85th mile from Georgian Bay.

“ 2nd. That the Company should, within one month, satisfy the Minister of Public Works, that they had entered into a *bonâ fide* contract for the building of the railway.

“ 3rd. That running powers should be given to certain roads on stated conditions.

“ 4th. That the Government or the lessees of the Government line from Georgian Bay, should possess running powers on similar terms to the Companies designated.

“ 5th. That payment of the subsidy should be made on the completion of the railway in sections of not less than 20 miles, upon the certificate of an engineer to be appointed by the Government.

“ That in consequence of the annulling of the contract for building the Georgian Bay Branch, it was considered best to complete the survey of the country to be traversed which had been, to a great extent, executed by the engineers of the contractor, with the result of raising some doubts as to the best direction.

“ That it was deemed inadvisable to urge the Canada Central Railway Company to proceed with the building of the subsidized line, until the more complete examination and survey of the country should have been accomplished.

“ That Mr. Hazlewood, the engineer originally charged with making an examination of the country from the mouth of the French River to the neighbourhood of Douglas and Pembroke, reported that a line, with fair gradients and average work, was practicable in the direction indicated by the Order in Council referred to.

“ That the engineers of the Canada Central, and those employed by Mr. Foster, reported more serious obstacles in grades and engineering work, and difficulties after leaving the lower part of the Bonnochère Valley; and though the Chief Engineer stated that he believed that

a more thorough exploration would prove that they were mistaken, it became necessary to ascertain the facts with greater particularity.

"That Mr. Lumsden was, therefore, despatched early in the season of 1876 with a strong party to do the work.

"That this engineer has reported, as the result of the season's operations, that a fair line can be obtained on Mr. Hazlewood's plan, but that for a considerable distance the work will be somewhat heavy, in consequence of the prevalence of rock-cutting, and that the maximum grade rising eastward would be 52·80 feet per mile, in an aggregate distance of about seven miles, and that there are three miles of the same grade rising westward. That this grade, though not excessive, is much higher than Mr. Hazlewood expected.

"That the engineer employed by the Canada Central Railway Company has reported that, so far as works of construction are concerned, a more favourable line could be obtained, ascending from Pembroke on a line nearly parallel with the Ottawa River, and distant from the same, after leaving the Petewawa River, an average of 8 or 10 miles, and touching in its course the south-east corner of Lake Nipissing.

"That the same engineer reports generally that the alignment of the road is good, and that it will not exceed 6 per cent. of curvature; that from Pembroke to Nipissing Road, five rivers are crossed four requiring bridges of a span of 100 feet, and one (the Petewawa) a span of 400 feet; that 40 miles are through a spruce, tamarac and hardwood country, and ninety miles through burnt woods and open country, the soil generally being of a sandy or gravelly character, with considerable reaches of clayey sand and sandy loam.

"That the estimated distance from Pembroke to the south-east corner of Lake Nipissing is about 130 miles. This point is about 20 miles further west than the point previously determined on as the eastern terminus of the Canadian Pacific Railway, (thus saving to the public the construction of about 20 miles of railway). From this point westward to Cantin's Bay, the projected station on French River, the distance is between 50 and 55 miles.

"That the Canada Central Railway Company, in a letter dated the 10th February, 1877, proposed that the Company should build the westward extension from Pembroke on this line, to the south-east corner of Lake Nipissing, for a total bonus of \$1,440,000, being at the rate of \$12,000 per mile upon 120 miles; that payment of the subsidy should be made on the basis of 80 per cent. of the expenditure, the drawback of 20 per cent. to be paid on the completion of every 10 miles, the line to be completed within three (3) years, and 75 per cent. of the value of rails delivered on the ground to be paid as the rails are delivered.

"That Mr. Fleming, Engineer-in-Chief, to whom the proposal was referred, reports as follows :—

' CANADIAN PACIFIC RAILWAY,

' OFFICE OF THE ENGINEER-IN-CHIEF,

' OTTAWA, 16th February, 1877.

' The Hon. A. MACKENZIE,

' Minister of Public Works.

' SIR,—I have the honour to report on the proposal made by the Canada Central Railway Company, in the communication addressed to you of date 10th inst.

'I do not altogether concur with the view expressed as to the impossibility of finding a line and building a first-class railway on the route originally laid down by the valley of the Bonnechère. It is due, I think, to an officer on my staff, Mr. Hazlewood, to state that the surveys

which have since been made substantially confirm the report on the reconnoissance which he made in 1874. He was instructed to walk over the ground, and report if it would be practicable to build a railway across the country in a direct course. On his return he reported that he felt quite safe in stating that a railway could be located on a direct course between the mouth of French River and Burnt Lake; in fact that the departure from a straight line would probably not increase the distance more than 5 per cent.

‘He further reported on the character of the country between Burnt Lake and Renfrew, *via* the valley of the Bonnechère River, and expressed the opinion that there would not be any great difficulty in finding a practicable line for the railway.

‘While I have, as yet, seen nothing to alter my own views with respect to the general accuracy of Mr. Haz’ewoo’s report, I am satisfied that there are no engineering objections to the proposal now submitted by the Canada Central Railway Company, to extend the line westerly from Pembroke instead of from Renfrew.

‘Indeed, the information obtained goes to show that a line with more favourable gradients may be obtained on the route now proposed to be adopted by the Canada Central, and that it will serve the interests of the country fully as well. I have, therefore, no hesitation in recommending that the proposal be favourably entertained.

‘I think it would be well to stipulate with the Canada Central Company that the gradients ascending westerly may be as high as 52·80 per mile, but that the maximum ascending in the opposite direction should be 26·40 per mile; and that the curvature and general alignment should be approved by the Department.

‘SANDFORD FLEMING.’

“That the House of Assembly of the Province of Quebec, on February 13th, 1875, passed a resolution which was communicated to the Government of Canada stating that, according to the reports of eminent men on the nature and configuration of the ground, it appears that a track which would follow the Mattawan would present the cheapest, the easiest, the shortest route for the development of the vast commerce of the west and of the Pacific, as well for the branch of the Pacific to the east of the Georgian Bay as for the line to be subsidized by the Government * * * and that in the event the exploration proves that a preferable line to that of the Mattawan exists to the south of the River Ottawa, the line to be subsidized by the Government, be brought to Pembroke, and not to Renfrew, where a junction with the railway system of the Province of Quebec is impossible, seeing the enormous expense which it would entail.

“That since that period the Government of Quebec have commenced the construction of railways on the northern side of the St. Lawrence and Ottawa Rivers, and the railway from Montreal westward to Ottawa has been completed by that Government.

“That though the line would be lengthened by this deflection to the northward, the western end of the subsidized line would, as stated, reach a point much further to the westward of the previously proposed terminus, or junction with that portion of the Canada Pacific Railway proposed to be built under the terms of the Act, to the French River, and would thus save to the public the cost of constructing about twenty miles of railway.

“The Committee of Council, after fully considering the facts as already summarized, recommend,—

“First.—That the proposition of the Canada Central Railway Company to extend the line to such point as may be selected by the Government as the terminus of the Canada Pacific

Railway, at or near the crossing of the Nipissing Road, at the south-east corner of Lake Nipissing, for the sum of one million and four hundred and forty thousand dollars (\$1,440,000) should be accepted, upon the condition as to grades recommended by the Chief Engineer, and that the total payment to be made shall not, under any circumstances, exceed the sum of twelve thousand dollars (\$12,000) per mile.

“Second.—That the Company shall, within three months of the ratification of this Order in Council by the House of Commons, satisfy the Minister of Public Works that they have entered into a *bonâ fide* contract or contracts, for the building of the railway, and have provided sufficient means, with the Government bonus, to secure the completion of the line and also that the Company shall, from the date of such contracts, make continuously such progress as will justify the hope of the completion of the line within the time mentioned.

“Third.—That the Company shall enter into an agreement to grant running powers, on terms to be approved by the Governor in Council, to the Montreal, Ottawa and Western Railway, now in process of construction, from Montreal, on the northern side of the Ottawa River, or any railway in extension thereof from any point of intersection west of the town of Renfrew, that may be approved of by the Governor in Council, and also to the Kingston and Pembroke Railway Company, from the intersection of their line, provided such point of intersection is at or west of Renfrew, and to such other Companies as may have the termini of their systems on or towards Lake Huron, and which may be designated by the Governor in Council as entitled to such running powers : Provided that the terms of such running powers to any of the said Companies or roads may be mutually agreed upon by the Canada Central Railway Company and the Quebec Government, and the other Companies named ; and in the event of a disagreement, the conditions to be settled by arbitration, one arbitrator to be selected by each party, and one by the Governor in Council.

“The Government of Canada and the lessees or future owners of the Government road, westward of the western terminus of the subsidized line, shall possess running powers in the said railway on similar terms to the Companies designated.

“Fourth. — That payments be made to the extent of eighty (80) per cent. of the said bonus of \$12,000 per mile on the completion of every ten miles—one-half of such payment may be advanced when work equal to five miles is completed on any one section, on the certificate of the Chief Engineer that satisfactory progress is being made—and payment to the extent of sixty (60) per cent. may be made on work extending over twenty-five miles upon the certificate of the Chief Engineer, that such work is equal to ten miles of completed track.

“The balance to be paid on the entire completion of the railway to the Nipissing road at the south-east corner of Lake Nipissing ; Provided that payments may be made upon rails delivered, to the extent of seventy-five (75) per cent. of the market value thereof—the amount so paid on rails to be deducted from each settlement of ten miles.

“All payments to be made on the certificate of the Chief Engineer.

“They further recommend that payments be made to the extent of eighty (80) per cent. of the work actually executed, on the completion of every ten miles, in the proportion which ten thousand dollars per mile bears to the actual cost of each section.

“The Company, however, to have the option of substituting the payment by the Government of the interest (or part of the interest) on bonds of the Company, running over such

term of years as may be hereafter approved by the Governor in Council, in lieu of the mileage subsidy referred to.

"The terms and conditions in all other respects to be the same as above provided.

"The grant to be operative only after the ratification of this Order in Council by resolution of the House of Commons.

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council."

This was laid before the House of Commons by the Minister of Public Works, and on the seventh day of May, 1878, it was ratified by a resolution of the House.

On the 26th of April, the Canada Central Railway Company notified the Minister of Public Works that on the 20th of that month, the Company had executed a contract with Messrs. Worthington & Co. for the construction of the extension from Pembroke to the point of junction with the proposed Georgian Bay Branch, a copy of which contract was, on the 10th May following, furnished to the Department.

We think it sufficient for the present purpose to give no more than the following portion of the said contract :—

'THIS INDENTURE, made between Duncan McIntyre, merchant, and James Worthington, contractor, both of Montreal, in Canada, hereinafter called the contractors, of the first part ; and the Canada Central Railway Company, hereinafter called the Company, of the second part ;

"*Witnesseth*: that the said parties hereto have contracted and agreed, and by these presents do contract and agree to and with each other in manner following, that is to say :—

"1. That the contractors will, at their own expense, construct and complete a railway for the transit of locomotives, steam engines, and any other description of motive power, ordinarily used and applied on lines of like nature, and of all carriages and waggons drawn or propelled thereby, and in complete readiness for such transit, as a single line, from a point at or near the crossing of the Nipissing road, at the south-east corner of Lake Nipissing, to be fixed by the Government of Canada as the Eastern Terminus of the Georgian Bay Branch of the Canadian Pacific Railway, to a junction with the presently constituted portion of the Canada Central Railway at or near the town of Pembroke, (the said railway being a section or extension of the Canada Central Railway, being hereinafter designated and known as the Western Section, and the presently constructed portion of the said Canada Central Railway, and being hereinafter designated and known as the Eastern Section); together with all stations and station houses, engine houses, sidings, switches, turnouts, turntables, fencing, and other appurtenances necessary for the due and convenient use of the said Western Section ; and shall also do and perform, or cause to be done and performed, at their own expense, all engineering work required in surveying, planning, laying out, preparing for and carrying on the said work ; including the making of all necessary plans, surveys and books of reference, and the perform-

ance of all the obligations in respect of engineering plans and surveys imposed upon railway companies by the general Railway Act of the Dominion, and by the charter of the said Company; of all which plans, surveys, sections and books of reference, copies shall be deposited with the said Company, free of charge, as soon as conveniently may be after the making thereof.

"2. The said Western Section shall be constructed, and the said works shall be done and performed in a good, substantial and workmanlike manner, and according to such plans, sections and drawings, as may be hereafter made under the supervision, or by the orders, of the Department of Public Works of Canada; or by or under the supervision of any engineer to be appointed by the Government of Canada as Supervising Engineer; or that may be adopted or approved by any order or report of any Committee of the Honourable the Privy Council of Canada, approved by His Excellency the Governor-General in Council, made or to be made in the premises, or by any subsequent order, amending or altering the same; and in all respects in accordance with such Orders in Council. And the portion of the Canada Central Railway, lying between Renfrew and Pembroke, shall be regarded as constituting a fair average standard of the character of the work to be done under this contract; subject always to such Order or Orders in Council as are or shall be made and passed, as hereinbefore described.

"3. The contractors shall, at their own expense, provide and pay for all materials, utensils and implements, labour and workmanship, required in the performance of the work contracted for; and will use and employ the best materials of every kind, such as the engineer for the time being having the supervision of the works on behalf of the said Government, shall approve of.

"4. The contractors shall provide the right of way for the said Western Section, and all land required for stations, sidings, turnouts, gravel and ballast pits, and the like, and shall pay for the same, and for all land and other damages which may become due and payable in respect thereof. And all title deeds of such land, and acquittances for such land damages, shall be taken in the name of the Company. And the contractors shall be, and are hereby, authorized and empowered to take all necessary steps and proceedings, make tenders and offers, appoint arbitrators, and carry on arbitrations, suits and actions, such as shall be useful or necessary in the acquisition or expropriation of land and adjustment of land damages; the whole in the name of the Company, but at their own proper cost and charges, to the entire exoneration of the Company.

"5. The said contractors shall commence the construction of the said railway so soon as the Order in Council respecting the subsidy is ratified by Parliament, and shall complete and finish the said railway according to the provisions hereof, in perfect running order, on or before the thirty-first day of December, in the year of our Lord one thousand eight hundred and eighty. And during the interval they shall make continuously such progress as will justify the expectation of the completion of the line within the said period; and if at any time during the progress of the work the Company's engineer shall report to the Company that the contractors are not then making such progress as will justify such expectation, and if the Company and the Honourable the Minister of Public Works of the Dominion concur in such report, such report shall be communicated to the contractors; and if within three months thereafter they shall not take such steps as shall be prescribed in such report as being necessary to cause their rate of progress to conform to the conditions of this clause, they shall be

conclusively held to be in default in the performance of this contract; and the Company shall thereupon have the right to take the works hereby contracted for out of the hands of the contractors, and to continue and complete them at the expense of the contractors; for which expense they shall have immediate right of action against the contractors from time to time, as disbursements are made by the Company in respect thereof; and the taking over the said works in the said manner and for the said cause, shall not be held to be an acceptance by the Company of the said Western Section within the meaning of this contract; nor shall the said Company thereby become liable either as to its personality in any manner whatever nor as to its realty to any extent beyond the said Western Section, for any bonds issued upon the said Western Section, or for any debt whatever contracted in respect thereof; and upon such taking over, the Government and all other subsidies in aid of the said work shall cease to be payable to the said contractors, and shall thereupon and thereafter become payable to the Company; and all obligation under this contract to deliver bonds to the contractors, and the right of the contractors to use and control the said Western Section, shall thereupon cease and determine.

"6. In consideration of the premises, and of the performance by the contractors of the several agreements, covenants and conditions on their part herein contained, they shall be entitled to receive for each mile of the said road, in respect of which a subsidy has been granted by the Government of Canada, to the extent of twelve thousand dollars per mile, the amount of the said subsidy, upon the terms upon which it has been granted; but without any warranty by the said Company of the payment thereof, the contractors themselves assuming the risk thereof and undertaking to obtain the same.

.

This contract having been referred to the consideration of the Chief Engineer, he reported upon it as follows:—

"OTTAWA, 17th May, 1878.

"SIR,—With respect to the contract between Messrs. McIntyre & Worthington, and the Canada Central Railway Company, which has been referred to me for consideration.

"It is not my province to deal with any but engineering questions and with respect to them I beg to remark:—

"1. I find the only specification as to the character of the line to be built in the 2nd clause: 'the portion of the Canada Central Railway lying between Renfrew and Pembroke, shall be regarded as constituting a fair average standard of the character of the work to be done under this contract.'

"2. On enquiry I have found that although that section of the Canada Central may serve the purpose of a railway, it is by no means of a high character and before it be accepted by the Government as the standard, I would advise that an examination be made of it.

"3. Under the 21st clause, the engineer of the Company appears to have very limited control over the works.

"4. There appears to be no provision for rolling stock and if my information be correct, the contract seems to give the contractors the power to build an inferior railway.

"5. As already stated I would advise that an examination be made of the proposed standard, and the Government reserve the right to approve of the gradients and curves and generally the plans and profiles of the location survey before being finally adopted.

"6. The western end of the line is rather indefinitely described; I would suggest that it be defined as being opposite the post office of Nipissingan, on the western side of South River.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"*Engineer-in-Chief.*

"F. BRAUN, Esq.,

"Secretary Public Works."

In pursuance of the recommendation contained in the above report, Messrs. Smellie and Ridout were, on May 23rd, 1878, directed to make an examination of that portion of the Canada Central Railway lying between Pembroke and Renfrew, and report thereon. They did so on the 6th June, 1878, and it gave rise to the following letter :—

"OTTAWA, 7th June, 1878.

"SIR,—I am directed by the Minister of Public Works to inform you that he has had under consideration the contract into which the Canada Central Railway Company have entered with Messrs. McIntyre & Worthington, for construction of line westward from Pembroke to be subsidized by Government, and that the same meets his approval, subject, however, to the following being understood with respect to certain portions thereof.

"Section 2 states that the portion of the Canada Central Railway lying between Renfrew and Pembroke shall be regarded as constituting a fair average standard of the character of the work to be done under the contract, but subject to special orders from the Government respecting plans, &c.

"The Minister regards that portion of the Canada Central Railway as being in some respects inferior to the character of the road which should be built under the subsidy; and, first, as regards the width of the embankments, which is at present about 14 feet at the finished level, they will require to be at least 16 feet, and if at certain points the Government engineer should deem it necessary to have the width extended to 17 feet, his requirements in this respect shall be acceded to. The cuttings of that portion of the road are also too narrow to afford proper drainage, and to make allowance for material falling into the ditches, and it will be required that the cuttings on the new line shall be not less than 22 feet. It will also be required that none of the curves shall be of less radius than that of the minimum radius of the curve upon the portion of the road between Pembroke and Renfrew, viz.: $4^{\circ} = 1,432$ feet; and the percentage of that curvature allowed shall be subject to the approval of Government.

"It will likewise be understood that the pile bridging existing on this portion of the road is not to be adopted on the subsidized line, but that the piles should be taken to the water or ground level, and bents erected thereon, which may, when necessary, be removed without inconvenience, and that where it is possible to do so without excessive expense, it would be desirable to have the abutments of stone work.

"It is further to be understood that no portion of the gradients ascending westward shall be in excess of 52.80 per mile, and that no portion of the gradients extending eastward shall be in excess of the maximum grade obtainable on the Georgian Bay Branch, which connects with the subsidized line at Lake Nipissing, and that the percentage of such maximum grade

relatively to the whole line shall not exceed the percentage of similar grades on the Georgian Bay Branch.

"Moreover, it is to be understood that it will be very desirable to have steel rails for the whole of the line; and although the Minister does not insist upon this as being a condition in the contract, he does insist, if steel rails are not laid, upon the procurement of a superior quality of iron rails, and that such rails be subject to the inspection and approval of Mr. C. P. Sandberg, the Government Agent in London, England.

"The contract gives authority in certain instances to the contractors to act in the room and stead of the Company in negotiations and business engagements with the Government.

"There is no special objection to this arrangement; but such provisos are approved only with the understanding that the Company themselves are not by such approval relieved from any of the obligations necessarily attached to them by virtue of the Order in Council, sanctioned by Parliament.

"I am, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"JNO. G. RICHARDSON, Esq.,

"President Canada Central Railway Co.,

"Brockville, Ont."

On 10th June, 1878, Messrs. McIntyre & Worthington, by a letter to the Minister of Public Works, formally accepted the conditions specified in the letter of the 7th of that month, above referred to, after which on the 7th June, 1878, an Order in Council was passed confirming the said contract, subject to the restrictions which had been specified in the above letter, from the Secretary of the Department, to the President of the Canada Central Railway.

The advance on account of rails which had been previously made in the year 1875, as before mentioned, to the extent of \$68,000, was satisfied by the new contractors, Messrs. McIntyre & Worthington, according to the terms of the following letter from them :—

"MONTREAL, 15th July, 1878.

"SIR,—Mr. Asa B. Foster has this day paid us the sum of eight thousand one hundred and seventy-two dollars for a shortage of two hundred and twenty-seven tons iron railroad rails, at the rate of thirty-six dollars per ton. And we hereby accept the railroad iron at Renfrew, now stored and lying there upon our contract for the extension of the Canada Central Railway from Pembroke to Lake Nipissing, for the sum of sixty-eight thousand dollars, the amount advanced by the Government on account of Government subsidy on said road to that amount.

"We have the honour to be, very respectfully,

"Your obedient servants,

"MCINTYRE & WORTHINGTON.

"The Honourable

"The Minister of Public Works,

"Ottawa."

It will be noticed that in the arrangement last made with the contractors, the grade which had, in the first instance, been adopted on the Georgian Bay Branch, and which was considered to be equally applicable to the extension, under the first contract with Mr. Foster, was no longer preserved. That which was held to be the maximum under the new contract was the one which was obtainable over the new location of the Georgian Bay Branch. That, though not mentioned in the writings, was, in fact, 40 feet per mile, as a maximum.

In the progress of the works under this new contract with Messrs. McIntyre & Worthington, it was ascertained that this grade could be secured only at an excessive cost. An application was made to the Government to relieve them, over a portion of the line, from that condition in the contract. Accordingly, the following Order in Council was passed :—

“ COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 16th June, 1880.

“ On a memorandum, dated 14th June, 1880, from the Hon. the Minister of Railways and Canals, representing that by an Order in Council, dated 17th June, 1878, having reference to the construction of the extension of the Canada Central Railway westward to meet the Pacific Railway, it was provided that ‘ no portion of the gradients ascending westward shall be in excess of 52·80 per mile, and that no portion of the gradients extending eastwards shall be in excess of the maximum grade obtainable on the Georgian Bay Branch (namely, 40 feet per mile).’

“ That an application has been received from the contractors, Messrs. Duncan McIntyre & Co., for permission to use the grade of 52·80 feet in place of 40 feet for a distance of three (3) miles, near Deux Rivières, ascending eastwards, the formation of the country being stated to be of such a nature as to render compliance with the order specified, almost impossible.

“ That the then Engineer-in-Chief of the Pacific Railway has reported that the ground is very difficult for a few miles at this point, and that no serious objection exists to the change proposed.

“ The Minister accordingly recommends that he be empowered to make the concession desired by the contractors for the change of grade at the point named. Such concession to be, however, distinctly understood as being exceptional and in no way to be drawn into a precedent.

“ The Committee submit the above recommendation for Your Excellency's approval.

“ Certified.

“ J. O. COTÉ,

“ Clerk, Privy Council.”

The works have been carried on under the above mentioned contract up to the date of our commission.

The expenditure upon it up to the 30th June, 1880, was as follows:—

30th June. 1879.....	\$250,479
30th June, 1880.....	629,494
Total.....	\$879,973

CONTRACT No. 17.

Transportation of Rails.

By this contract, dated 8th April, 1875, James Anderson, James George Skelton Anderson, Alexander Gavin Anderson and William Richard Anderson, under the name of Anderson, Anderson & Co., covenanted, for the price of £2 sterling per ton, to transport in the manner and at the times specified, from Liverpool, England, to ports on Vancouver Island, about 5,000 tons of steel rails with their necessary accessories.

This contract was entered into without any competition, and arose in consequence of the purchase of a quantity of rails to be delivered at Liverpool, with a view to sending them to Vancouver Island. As before mentioned in our reports on contracts respecting steel rails, no tenders had been invited for any to be delivered except at Montreal. The first official intimation of the likelihood of requiring some at an English port is to be found in a letter from the Secretary of the Department to Messrs. Cooper, Fairman & Co., dated the 5th December, 1874. This was written in answer to an enquiry by that firm concerning the delivery of rails upon the western lakes, and it contains the following closing sentence:—

“It may, however, be decided to have some of them delivered at an English port, in which case notice will be given in time.”

This was followed on the 29th December, 1874, by a letter from Mr. Cooper to the Minister, offering 6,400 tons of rails at Liverpool without any reference to the item of transportation. That offer led to no transaction, and was followed on the 4th January, 1875, by another letter from this firm set out below:—

“MONTREAL, 4th January, 1874.

“DEAR SIR,—We received cable message advising that the Mersey Company have signed tender for delivery in Montreal only. With reference to the 10,000 tons required f. o. b. Liverpool, by taking immediate action by cable we can probably arrange it, the original tender being all for shipment here. To facilitate matters, we would be glad to have your instructions with reference to this and the delivery at Vancouver Island. We can probably secure freight at £2 per ton, although £2 10s has been asked. Upon receipt of your instructions,

we will cable for figure and make contract for delivery on the Pacific coast. Waiting your early reply, we remain,

"Yours respectfully,

"COOPER, FAIRMAN & CO.,

"For Mersey Iron and Steel Company.

"Hon. A. MACKENZIE,
"Ottawa."

This is the first step in the negotiations concerning freights to Vancouver, which is recorded in the Department, and from the tenor of this letter, we gather that in some previous communication this firm had been informed that a quantity of rails would be required by the Government, to be delivered at Liverpool, and transported to Vancouver Island. On the day after this, the Secretary of the Department formally declined the offer which had been previously made on the 29th December, 1874, to supply 6,400 tons, as before mentioned. On the 7th January, 1875, the Secretary of the Department telegraphed Messrs. Cooper, Fairman & Co. as follows:—

"If freight to British Columbia can be got at £2 sterling, the Government will take 5,000 tons of steel rails shipped at any time. Delivery will be at Esquimalt, Cowichan Bay or Nanaimo, at all of which places there are good facilities.

"F. BRAUN,
"Secretary."

After which the following correspondence took place:—

"MONTREAL, 13th January, 1875.

"DEAR SIR,—In reply to telegram of 7th inst., we beg to advise you that we have purchased, on account of Dominion Government, 5,000 tons Bessemer steel rails at £10 10s. 0d., f. o. b. Liverpool; cash against bills of lading.

"We have also contracted freights to Vancouver ports, viz.:—Esquimalt, Cowichan Bay, and Nanaimo, at £2 5s. 0d. sterling per ton.

"The Government assuming the responsibility of freight, &c., which is to say, to pay shippers, makers not assuming delivery to Vancouver ports.

"Should you require the track bolts for this lot, we can arrange for them and include. We are advised that steel rails are now held at £11 0s. 0d. We would be glad to be favoured with the address of your Bankers in England, to whom we suppose the bills of lading will require to be presented. Kindly confirm the contract as soon as possible to enable us to cable reply, the necessary documents to follow.

"Yours faithfully,

"COOPER, FAIRMAN & CO.

"Hon. A. MACKENZIE,
"Ottawa."

“(Confidential.)

‘Copy of cable received 13th January.

“COOPER, Montreal :—

‘Have bought Vancouver rails f. o. b. here; freights arranged; obliged to pay 45 shillings; obtain differences from Government; Government must assume responsibility, freights and insurance; makers now asking eleven pounds.’”

“MONTREAL TELEGRAPH COMPANY,

“OTTAWA, 14th January, 1875.

“By Telegraph from Montreal to Wm. Buckingham, Department of Public Works.

“Have cabled for positive information; believe insurance included; will answer to-morrow.

“COOPER, FAIRMAN & CO.”

“MONTREAL TELEGRAPH COMPANY,

“OTTAWA, 14th January, 1875.

“By Telegraph from Montreal to Wm Buckingham, Public Works Department.

“Government have to pay freights at rates averaged 45 shillings to Vancouver ports; the makers not assuming delivery beyond Liverpool. I cabled to get freight at 40 shillings; after much labour, succeeded in getting delivery at 45 shillings, being better than allowing rails to be withdrawn. Rails now worth £11 0s. 0d. Assuming difference means accepting rates arranged for, namely. 45 shillings per ton.

“JAMES COOPER.”

“MONTREAL, 15th January, 1875.

“DEAR SIR,—I am in receipt of your telegram in reply to cable message received to-day. The extra five shillings added was for insurance, which was omitted in quotations for delivery at Vancouver ports. I have cabled again this evening, and will likely have a final reply to-morrow afternoon, which I trust will be satisfactory to you.

“I remain, yours respectfully,

“JAMES COOPER.

“WM. BUCKINGHAM, Esq.,

“Ottawa.”

“MONTREAL TELEGRAPH COMPANY,

“OTTAWA, 15th January, 1875.

“By Telegraph from Montreal to Wm. Buckingham, Public Works.

“Cable reply received says freight and insurance fifty shillings; impossible to get less.

“JAMES COOPER.”

“OTTAWA, 18th January, 1875.

“By Telegraph from Montreal to Wm. Buckingham, Public Works.

“Accept your offer made by telegraph on the 7th. Rails, ten pounds ten shillings (£10 10s.); freight, forty shillings; insurance not included.

“JAMES COOPER.”

" MONTREAL, 18th January, 1875.

" DEAR SIR,—We are in receipt of a cable message to-day which enables us to accept your offer of 7th January for 5,000 tons of Bessemer steel rails at £10 10s., f.o.b. Liverpool, terms cash on delivery and freight to Vancouver ports, viz. :—Esquimalt, Cowichan and Nanaimo, at forty shillings per ton, insurance an open question.

" Makers of rails only delivering f.o.b. Liverpool.

" Please confirm the above at your earliest convenience to enable us to confirm sale in England by cable.

" We remain yours faithfully,

" COOPER, FAIRMAN & CO.

" P.S.—We would be glad if you can favour us with the address of your Bankers, to whom we are to present bills of lading of delivery.

" WM. BUCKINGHAM, Esq.,

" Ottawa."

" OTTAWA, 21st January, 1875.

" GENTLEMEN,—In reply to your several communications on behalf of Messrs. Naylor, Benzon & Co., I am to state that the Government accepts their offer to supply 5,000 tons of steel rails at £10 10s. 0d. sterling per ton f.o.b. at Liverpool, and allows £2 0s. 0d. per ton for freight to the Vancouver ports.

" The Agent-General of the Dominion, E. Jenkins, Esq., M.P., will see to the insurance.

" Messrs. Morton, Rose & Co. are the Financial Agents of the Government in London.

" I have, &c.,

" F. BRAUN,

" Secretary.

" MESSRS. COOPER, FAIRMAN & Co.

" Montreal."

We have endeavoured to ascertain why the Department assumed that the price named by Messrs. Cooper, Fairman & Co. would be a proper one to pay for the work to be done under this contract. We have not learned that any enquiry took place upon the subject, and it appears to have been left in the hands of Messrs. Cooper, Fairman & Co. to fix the price at which it should be undertaken.

Mr. Mackenzie was asked whether he remembered if any steps were taken to ascertain the prices of freights in England before giving the work to Messrs. Cooper, Fairman & Co., or whether they were allowed to fix the rates. His answer was as follows :—

" No ; we had some information. Whether it was looking at the newspapers or getting the rates from some other quarter, I do not remember. That was about the freight : £2 10s. was what they asked in the first place, I believe. That we declined, and we gave £2."

Mr. Mackenzie's recollection upon this last feature was at fault, because, as has been shown, their first offer was £2, and after it was

accepted they endeavoured to raise the price, but were held to the original bargain.

The character in which Messrs. Cooper, Fairman & Co. acted in this transaction is not plain upon the evidence. In their first letter, of the 4th January, 1874, above set out, they allude to the 10,000 tons which had been apparently mentioned upon a previous occasion between them and the Minister, or some other person on behalf of the Department, and they say that to facilitate matters they would be glad to have the Minister's instructions with reference to this quantity of rails, and the delivery at Vancouver Island, proceeding to say that they can secure freight at £2 a ton. The tone of this letter appears to us to suggest, that they assumed that they were acting to some extent as agents for the Government.

Mr. Fairman, of the firm of Cooper, Fairman & Co., was in England negotiating with Messrs. Anderson, Anderson & Co. concerning this contract, and while giving evidence as a witness, was asked to explain the relation between his firm and the Government, upon the subject of this contract. He said, in effect, that he acted as a go-between for the Government and these contractors, in the interest of Anderson, Anderson & Co.; that acting in that interest his object would be to get as much freight as possible, and as high prices as possible, and being asked whether it had ever been understood that he was acting for the Government during these communications, his answer was in the affirmative. In the progress of his examination he stated that he was desirous not to pay more than was necessary in connection with the matter; that in the matter of freight, he had no interest except to get it as reasonable as he could.

The formal contract was closed in accordance with the letter of the Secretary, of the 21st January, 1875, by which the offer of Messrs. Cooper, Fairman & Co at £2 sterling per ton was accepted. We have had no opportunity of learning, whether at the time that this offer was accepted, the price named in it was as low as any at which the transportation could be secured, and upon the evidence there is no reason to conclude that any unnecessary expense was incurred by the Department, in entering into this contract.

The following sums have been paid on account of it:—

30th June, 1875.....	\$32,325 57
“ 1876.....	19,137 39
Total.....	<u>\$51,462 96</u>

CONTRACT No. 18.

Transportation of Rails.

This contract is not contained in any single document. It was closed by a letter of the 22nd May, 1875, directed to the Manager of the Red River Transportation Company, in which the Secretary of the Department accepted and recited the terms of a previous offer. The terms thus stated were confirmed by a subsequent letter from Mr. Kittson, the Manager of that Company, dated 27th May, 1875. The bargain was for the transportation of about 5,000 tons of rails from Duluth to Winnipeg, or some point on the Red River between Pembina and Winnipeg, and, (subject to certain specified conditions), to the railway crossing at Selkirk, at the rate per ton, of 2,000 pounds, of \$15, American currency. A much larger quantity than 5,000 tons has been transported by these contractors, and the expenditure concerning the whole has been charged under the head of this contract. There was a correspondence in 1876, between these contractors and the Government, concerning the transportation of a larger quantity than above mentioned, and there may be a question whether all beyond 5,000 tons was carried under terms supposed to be concluded in that correspondence, or as a continuation of work under the correspondence of 1875. The price named for rails throughout being the same, \$15 American currency for a ton of 2,000 pounds, the correspondence of both years is hereinafter set out. No competition was invited in this case. There were, nevertheless, two rival offers for the work to be done. The first of these was contained in a letter of Messrs. Fuller & Milne, as follows:—

“HAMILTON, 16th April, 1875.

“SIR,—Noticing your advertisement for tenders to transport steel rails and fastenings to Fort William or Duluth, we have the honour to state that if the Government conclude to take railroad materials to Manitoba *via* Duluth, we are prepared to carry the steel rails and fastenings required for the Pembina Branch, and for the section of the Canada Pacific Railway, from the crossing of Red River to Lake of the Woods during the present and ensuing summer, at the following rates (American currency) delivered over the rail, viz. :—

“From Duluth to any point on Red River between the boundary line and Fort Garry, for thirteen dollars and fifty cents (\$13.50) per ton. From Duluth to the crossing of the Canadian Pacific Railway over Red River, for the sum of fifteen dollars (\$15) per ton. In either case no Customs fees or dues to be charged to us on entering Manitoba.

“Provided the Government obtain permission from the American Government to transport the same through their territory without bonds, or on our own personal bond.

"Payments to be made at the rate of ninety per cent. on delivery, and that we be informed of the acceptance of this tender on or before the fifth day of May next. Our address will be Fort Garry after the 30th inst.

"We have the honour to be, Sir,

"Your obedient servants,

"FULLER & MILNE.

"F. BRAUN, Esq.,

"Secretary Public Works Department,

"Ottawa."

On the 21st April, 1875, the two following communications were forwarded to the Department from Mr. Kittson, the General Manager of the Red River Transportation Company :—

"OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,

"No. 92 THIRD STREET, ST. PAUL, MINN., 21st April, 1875.

"SIR,—I hereby offer to transport railroad iron chairs, fish bars, spikes, and other material for track, from Duluth, Minnesota, to Winnipeg, Manitoba, or any point on the Red River between Pembina and Winnipeg, at the rate of \$15 (United States currency) per ton of 2,000 lbs., and I further offer that in case the channel of the Red River, at the Rapids at St. Andrews, between Winnipeg and the Stone Fort, is improved, so as to make a channel of sixty feet in width free from rocks and boulders, so as to enable boats and barges to pass with ordinary safety, to make the same rate, namely, \$15 per ton, from Duluth to the point of crossing of the Canadian Pacific Railway, north of said Stone Fort, or in case the said rapids are not improved I will allow the barges loaded with such railway material to be run down to said crossing, provided that the Canadian Government will receipt for the material at Winnipeg, and will assume all risk of danger of navigation arising from said rapids on down trip to both boat and cargo.

"The above rate to hold good and be in force during the season of navigation on the Red River, as long as there is two feet of water on the rapids and shoals of said river.

"This offer includes all labour in handling above material from the dock at Duluth to the bank of the river at point of delivery.

"Very respectfully,

"Your obedient servant,

"N. W. KITTSON,

"General Manager.

"The Honourable ALEXANDER MACKENZIE,

"Minister of Public Works,

"Ottawa."

"OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,

"No. 92 THIRD STREET, ST. PAUL, MINN., 21st April, 1875.

"SIR,—In accordance with your wish expressed to our Mr. Hill during his recent visit to Ottawa, I now desire to put in writing the offer made by him, to transport railway iron, chairs and spikes from Duluth to a point in Manitoba.

"With reference to the improvement of the rapids mentioned in my offer, I beg leave to state that from the information I have received, I am of the opinion that it could be made at a very small cost to the Government.

Very respectfully,

"Your obedient servant,

"N. W. KITTSOY,

"General Manager."

"HON. ALEXANDER MACKENZIE, Minister Public Works, Ottawa."

On the 23rd April, 1875, the Secretary of the Department wrote to Messrs. Fuller & Milne, acknowledging the receipt of their offer without further reference to it, after which it was not noticed by the Department. On the same day the offer of Messrs. Fuller & Milne was referred to the Chief Engineer. The offer of Mr. Kittson was not so referred. On the 28th April, 1875, the following letter was written by the Secretary to Mr. Kittson:—

"OTTAWA, 28th April, 1875.

"SIR,—I beg to acknowledge the receipt of your letter of the 21st. inst., together with the accompanying written offer relative to the proposed transportation from Duluth, U. S., to Manitoba, of steel rails, etc., and to state that Mr. Hill's verbal offer to the Department, when in Ottawa, comprised wharfage or other charges at Duluth. As no mention of these is made in your written offer, I am requested to ask that it be also put in writing so as to form part of said offer.

I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary."

"N. W. KITTSOY, Esq.,

"92 Third Street,

"St. Paul, Minn., U. S."

The records of the Department, in the writing of the Deputy Minister, show the following directions: "Agree with these people for 5,000 tons, 30th April, 1875."

Subsequently, on May 5th, 1875, the Chief Engineer furnished the following report:—

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER IN CHIEF,

"OTTAWA, May 5th, 1875.

"SIR,—I return the letter of Messrs. Fuller & Milne offering to carry rails from Duluth to any point on the Red River between the boundary line and Fort Garry at the rate of \$13.50 per ton.

"Considering everything, I do not think price unreasonable; but before entering into a contract with these gentlemen, I think it would be advisable to look into the matter mentioned in the second last paragraph of their letter.

"Yours truly,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works."

On May the 8th Mr. Kittson amended the formal offer which he had previously made, as follows:—

"ST. PAUL, 8th May, 1875.

"SIR,—I have the honour to acknowledge the receipt of your favour of the 28th ult.

"In reference to the omission to include in my offer 'wharfage and other charges' at Duluth, was, so far as the wharfage, an oversight on the part of Mr. Hill in reporting the terms to me. On consulting Mr. Alexander, of the North Pacific Railway, and Mr. Hill, they informed me that they understood that wharfage or dockage was to be included in the offer, and I now beg leave to say that these charges are included in my offer. You must, however, allow me to state my offer cannot cover any charges on the material in question which may arise in the United States Customs Department, if any.

"If our offer is accepted we respectfully ask that the Dominion Government grant us time to make necessary and indispensable preparations to do the work satisfactorily.

"I have the honour to be,

"Very respectfully,

"Your obedient servant,

"N. W. KITTSON,

"General Manager R. R. Transportation Company.

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

The offer thus made on behalf of the Red River Transportation Company was accepted by the following communication from the Secretary of the Department:—

"OTTAWA, 22nd May, 1875.

"SIR,—Referring to your letters, of the 21st ult. and 8th inst., on behalf of the Red River Transportation Company, offering to transport rails and accessories from Duluth, Minnesota, to a point in Manitoba, on the conditions hereafter mentioned, I beg to inform you that the Honourable Minister of Public Works accepts of said offer, viz:—

"To transport railroad iron, chairs, fish bars, spikes and other material for track, from Duluth, Minn., to Winnipeg, Man., or any point on the Red River between Pembina and Winnipeg at rate of (\$15) fifteen dollars, United States currency, per ton of two thousand pounds, and in case the channel of the Red River at the Rapids of St. Andrews, between Winnipeg and the Stone Fort, is improved so as to make a channel of sixty feet in width, free from rocks and boulders, so as to enable boats and barges to pass with ordinary safety, to make the same rate, namely, fifteen dollars per ton from Duluth to the point of crossing of

the Canadian Pacific Railway, north of said Stone Fort, or in case the said rapids are not improved to allow the barges loaded with such railway material to be run down to said crossing, provided that the Canadian Government will receipt for the material at Winnipeg, and will assume all risk of danger of navigation arising from said rapids on down trip, to both boat and cargo.

"The above rate to hold good and be in force during the season of navigation on the Red River as long as there is two feet of water on the rapids and shoals in said river.

"This offer to include all labour in handling above material from the dock at Duluth to the bank of the river at point of delivery, also all wharfage or other charges at Duluth, but not charges which might arise in the United States Customs Department.

"The transportation of these rails, about five thousand tons, to take place within one month from their arrival at Duluth.

"The points of delivery of these rails, &c., to be indicated by the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSO, Esq.,

"General Manager Red River Transportation Company,

"St. Paul, Minn., United States."

This was followed by a letter to the Secretary from Mr. Kittson, closing the negotiations, and from that time forward the matter has been treated as a binding contract. The last-mentioned letter is set out below:—

"ST. PAUL, MINN., 27th May, 1875.

"SIR,—I have the honour to acknowledge the receipt of your favour of May.

"The conditions contained in your communication are all in accordance with the proposition which I had the honour to make on the 21st April and 8th inst. for the transport of rails and other material to Manitoba. Preparations will at once be made for moving the rails with as little delay as possible after their arrival at Duluth, so that as large a proportion as practicable can be delivered before the season of low water. You will please indicate to me in due time the point of delivery, and name the Agent for the Government who will receive the rails in Manitoba.

"Allow me to bring to the notice of the Honourable Minister of Public Works, that no mention has been made of the time of payment. I presume the usual mode would not be objectionable, that is, payment to be made as fast as our boats deliver the rails at the point of destination. Will you kindly inform me, if this is acceptable, and if so, if any particular form of certificate will be required to be obtained by me from the Agent at Manitoba as a satisfactory voucher to be paid on presentation.

"The Northern Pacific Railway Company will receive the rails on arrival at Duluth.

"I have the honour to be, very respectfully,

"Your obedient servant,

"N. W. KITTSO,

"General Manager R. R. T. Co."

"F. BRAUN, Esq.,

"Department of Public Works,

"Ottawa."

The offer above mentioned as having been made by Messrs. Fuller & Milne appearing to us to be decidedly more favourable to the Government than that made by the present contractors, we have endeavoured to ascertain the reason which moved the Department, to accept the higher-priced one. It will be noticed that in the offer on behalf of the Red River Transportation Company the ton is limited to 2,000 pounds. The evidence before us shows that the offer of Fuller & Milne was intended to cover a ton at 2,240 pounds. There appears to be some difference of opinion among the officials connected with the Department as to the weight of a ton of rails, when the number of pounds is not specified. Messrs. Fuller & Milne were not asked by the Department to specify the number of pounds at which they estimated the ton of their offer.

Mr. Fuller, as a witness, stated that the ton meant by him was the long ton, and that he never thought of any other in connection with this matter than that of 2,240 pounds. He testified that he was able to make a competing offer upon this occasion because there were rival lines of boats on Red River, the opposition being very keen, and that there were also competing lines of railway from Duluth to Red River, which fact lowered also the prices of land carriage. According to his recollection, rails were carried during that season between Duluth and points on the Red River at \$50, American currency, per car load of ten tons.

At this time the Mr. Fuller, of Fuller & Milne, was a contractor with the Government for the construction and maintenance of a telegraph line from Livingston to Edmonton, under contract No. 2, and there seems to have been no difficulty upon the subject of his responsibility. Mr. Mackenzie said in his evidence that he supposed he could be dealt with

The offer of Fuller & Milne, if it had been enquired into by the Government, would have been ascertained to mean \$13.50, American currency for a ton of 2,240 pounds from Duluth to any point on Red River, between the boundary line and Fort Garry, and it was at the rate of \$15, American currency for delivery at the crossing of the Canadian Pacific Railway over the Red River, *i.e.* Selkirk, without any qualification as to state of water in Red River.

The offer made on behalf the Red River Transportation Company was plainly encumbered by very serious conditions, concerning the delivery at the crossing at Selkirk, which was the intended destination of a consider-

able portion of the rails, and these conditions led to a disappointment in the delivery at that point as hereinafter described.

Mr. Mackenzie, when asked by us why a higher price should be paid to Kittson & Co., than to Fuller & Milne, said he thought they were the only parties who could do it—that they had control over all the boats on the river, and of the Railway, and that by giving it to Kittson they paid nothing for storage or wharfage, and that there was a question of currency which made a difference of some cents. It is evident that Mr. Mackenzie is mistaken in the last-mentioned reason, because, in fact, Messrs. Fuller & Milne had made their offer plainly in the same currency as that named by Mr. Kittson.

It will be noticed that in Mr. Fleming's report of 5th May, above mentioned, he refers to the matter mentioned in the second last paragraph of Messrs. Fuller & Milne's letter, which related to some terms on which the transportation was to be made through American territory. This paragraph created no material difference on this score between the offers of Messrs. Fuller & Milne and the Red River Transportation Company, and it is in evidence that the acceptance of the one or the other in no way turned upon the clause thus referred to by Mr. Fleming.

As a fact, the amount of \$946.84 was paid by the Government for bonding charges on the railtransported under this contract, in addition to the prices named in the correspondence for the service itself.

The terms upon which this bargain was closed between the Government and the Red River Transportation Company included, among other things, this condition—that the transportation should take place within one month from the arrival of the material at Duluth. As a fact, 5,118 tons were landed at Duluth in 1875. Of these no more than 2,558 tons were delivered on the banks of the Red River during that season, and these were deposited where they were not available for the purpose for which they were transported. The residue 2,560 tons, were left at Duluth to be moved in some following season.

After investigating the merits of the two offers, it appears to us that that of Messrs. Fuller & Milne was, at the time of awarding the contract, more favourable to the Government than the other one, in the following respects:—The rate was \$1.50 lower per ton for whatever quantity should be moved, no further north than Winnipeg, and for the balance the liability to deliver at Selkirk was positive. The offer of Messrs. Fuller &

Milne was to take upon themselves the duty of moving the rails at such a time of year as would make the navigation of Red River available—or the alternative of moving them by land at their own cost—while the offer of Mr. Kittson threw all these risks, and they turned out to be serious and expensive risks upon the Government.

Again, the weight of the ton was, in the estimation and the intention of Messrs. Fuller & Milne, 2,240 pounds instead of 2,000 pounds, at which latter weight the contract was awarded to the Red River Transportation Company. This distinction alone gave the opportunity of saving an additional \$3,500 American currency on the 5,000 tons named in the contract.

As a fact, the failure to reach Selkirk on account of these conditions being granted to the contractors led, as mentioned in our report upon contract 5 A, to the Government entering into an arrangement with Mr. Whitehead, in order that these rails should be made available for contract No. 14 as quickly as possible, and the entering into that contract No. 5 A without competition, as was done, and without defining carefully the prices, as was also done, led to a serious loss by paying higher prices on that contract 5 A than ought to have been paid under the circumstances.

The evidence concerning this contract, as a whole, leads us to conclude that in obtaining it the contractors got an undue advantage; they got higher prices than were necessary to be paid, and were allowed conditions as to the delivery which were not desirable, and which could have been avoided by accepting the lower offer, and that at the time of awarding it, it was within the power of the Department to secure the work covered by it at a price considerably less than was promised to the contractors, and without conditions which were inserted, and which proved to be a great disadvantage to the Government. The evidence does not disclose the reason for paying the higher price, or conceding the other advantages; although the gentlemen who were then respectively the Minister, the Deputy Minister and the Chief Engineer, have been examined by us touching the subject.

As before mentioned, 2,560 tons of the quantity covered by this contract remained unmoved at Duluth, at the end of the year 1875.

In the spring of the following year, Mr. Kittson wrote as follows:—

“ST. PAUL, MINN., 19th April, 1876.

“SIR,—I hereby respectfully offer and agree to transport railway material, as described below, at the respective rates for each article named therefor; such transportation to be done over the Northern Pacific Railway and the steamboats and barges of the Red River Transport-

ation Company, and the rates named hereafter to hold good and be in force as long as there is a depth of 30 inches of water on the rapids and shoals of said Red River; and to deliver such railway material at any point designated on the bank of said river (where a good landing may be obtained) in the Province of Manitoba; provided it shall not be required of me to deliver any of such material north of the so-called rapids on said river at or near St. Andrews, in said Province, unless the depth of water on such rapids shall be for the purpose of navigation not less than 6 feet. The rapids at St. Andrews are considered, by steamboat pilots, a very dangerous place, against the dangers of which we cannot insure, and I make the stipulation in regard to the depth of water on said rapids, having in view both the safety of the boats and cargo. However, in case of emergency, when it should be desired to take any material over said rapids I will do all in my power, provided that the Dominion Government takes the risk of both boat and cargo.

"The rates for transportation to be as follows: rails, chairs, joints and spikes, 75 cents per 100 lbs., in U.S. currency.

"Railway locomotives, from St. Paul or Duluth to Moorehead, 35 cents per mile, and from Moorehead to point of delivery, in Province of Manitoba, \$1 per 100 lbs., in U.S. currency.

"Passengers or baggage cars, 15 cents per mile, from St. Paul or Duluth to Moorehead, and 75 cents per 100 lbs. from Moorehead to points of delivery in Province of Manitoba.

"Boxcars, 10 cents per mile, and flatcars, 8 cents per mile, from St. Paul or Duluth to Moorehead, and 75 cents per 100 lbs. from Moorehead to points of destination in Province of Manitoba, all in U.S. currency. It is understood that all locomotives and cars shall be in such condition that they can be hauled over the railway from St. Paul or Duluth on their own wheels.

"It is understood that the officer or engineer receiving the material should furnish a sufficient tramway or trestle upon which locomotives or cars can be safely unloaded.

"The Red River Transportation Company have now seven steamboats and fourteen barges, and the carrying capacity of the line is more than double what it was last year.

"With a fair stage of water in the Red River the coming season I could transport from 8,000 to 10,000 tons.

"The remainder of the rails, from last year, will go down on the first boats.

"I have the honour to be, Sir,

"Very respectfully

"Your obedient servant,

"N. W. KITTSON,

"General Manager, R.R. Transportation Co.

"To the Honourable

"Minister of Public Works,

"Ottawa, Canada."

On this matter the Chief Engineer reported as follows:—

"OTTAWA, 13th May, 1876.

"SIR,—With regard to the transportation of rails to Red River, there were 5,118 tons landed at Duluth last year, of which 2,558 tons were delivered on the banks of Red River, about eight miles from Winnipeg; the remainder, 2,560 tons are, I believe, to be moved forward this spring.

"I would recommend that arrangements be entered into for moving a further quantity this year, and I would suggest that they be delivered at the town plot of Selkirk. I doubt if

the forwarders, from what I can learn, will be able to transport more than 5,000 tons, during the present season, but I think arrangements should be entered into for that quantity.

"I would also suggest that arrangements be at once made to take forward to Selkirk, one locomotive and say a dozen flat cars; this can only be done while the water in Red River is high, and as the river is in this condition only for a few weeks, no time should be lost.

"With a working train at the place indicated, we would be enabled to commence track-laying on the 14th contract at an early day.

"I am, etc., etc,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works Department."

Mr. Kittson's offer was accepted in the following communication as far as all the articles are concerned except rails:—

"16th May, 1876.

"Sir,—With reference to your letter of the 19th ult., offering to transport material required in connection with the Canadian Pacific Railway, I am to state that your offer is accepted on the following conditions:—

"All transportation to be done over the Northern Pacific Railway and by the steamboat and barges of the Red River Transportation Company, at the rates named hereafter, to hold good during the present season of navigation, so long as there is a depth of thirty inches of water on the rapids and shoals of the Red River, the material to be delivered and piled at any point designated by this Department where a good landing may be obtained in the Province of Manitoba. No delivery to be required north of the rapids at or near St. Andrews, unless there be a depth of water on said rapids, for purposes of navigation, of six feet.

"The rates of transportation to be as follows:—

"Fish-plates and bolts, spikes, points, crossings and switch gear, 75 cents U. S. currency, per 100 lbs. weight. Each railway locomotive with tender, from St. Paul or Duluth to Moorehead, 35 cents per mile, and from Moorehead to point of delivery in Manitoba, \$1.00 per 100 lbs. U. S. currency. Each passenger or baggage car, 15 cents per mile from St. Paul or Duluth to Moorehead, and from Moorehead to point of delivery in Manitoba, 75 cents per 100 lbs. weight. Each box car 10 cents per mile, and each flat car 8 cents per mile, from St. Paul or Duluth to Moorehead, and from Moorehead to point of delivery in Manitoba both box and flat cars, 75 cents per 100 lbs. weight, all in U. S. currency.

"All locomotives and cars to be in such condition that they can be hauled over the railway on their own wheels; and the officer receiving them to furnish sufficient tramway or trestle for their unloading in the Province of Manitoba.

"If, owing to the state of the water, or to other cause, transportation be delayed, the material not to be allowed to remain at Duluth or any other place, where wharfage or demurrage dues may be charged against the Government.

"I have the honour to be, Sir,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"N. W. KITTSON, Esq.,

"General Manager Red River Transportation Co.,

"St. Paul, Minn."

Mr. Braun's letter was answered as follows :—

"OFFICE OF THE RED RIVER TRANSPORTATION COMPANY,

"120 EAST THIRD STREET,

"ST. PAUL, 27th May, 1873.

"SIR,—I have the honour to acknowledge the receipt of your favour of the 16th inst., informing me of the acceptance of my offer made to the Hon. Minister of Public Works, under date of April 19th, 1876, with the addition of the following clause :—

"If, owing to the state of the water or to other cause, transportation be delayed, the material not to be allowed to remain at Duluth or any other place where wharfage or demurrage dues may be charged against the Government.

"Which additional clause I hereby accept and include in my offer of above date.

"The iron remaining over from last season is being taken down and will all be landed in Manitoba within two weeks, when we shall be pleased to receive another quantity equal in amount or more to your last year's shipment.

"I remain, very respectfully,

"Your obedient servant,

"N. W. KITTSON,

"General Manager.

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

In Mr. Braun's acceptance of Mr. Kittson's offer it will be noticed that rails are omitted. The evidence does not show whether that omission was due to inadvertence or to the idea that since the same price for rails was asked in the offers of both years, there was no need of repeating the bargain.

As a fact the new correspondence was numbered contract 23, but as none of the principle articles named in it, except rails, were transported, Mr. Fleming's report of 1877, page 395, states that no work was performed under contract No. 23. The books of account show no expenditure charged against it, the Department treating the transportation of rails by these contractors as part of contract 18, and the payments are charged accordingly.

As before mentioned the failure by these contractors to deliver the rails at Selkirk, was alleged to be, on account of the state of the water in Red River, and that they were thereby relieved from delivering them.

Mr. Rowan, the District Engineer, gives the following evidence on this matter :—

"The facts are these: The first I knew of such a contract at all was the rails coming here (Winnipeg), and parties asking me where they would

unload them, and I told them at Selkirk ; and they told me they could not go down the rapids at St. Andrew's. I said : ' You must go down ; I want the rails down there.' They said they would not, that their agreement with the Government was that they could navigate the whole of the Red River from Moorehead to St. Boniface, and were bound by the Government to carry the rails as long as there was two feet of water in the river, but to go over the St. Andrew's Rapids they had to have six feet. I thought it was a very peculiar thing, and if my recollection serves me right, I applied to Ottawa to know if it was the case, and I got a copy of the agreement that was made, and I insisted upon their going down, notwithstanding their contract. I said they must go down, that there was six feet of water there. They went down with the first load part of the way, and then turned back when they got to the head of the rapids, and unloaded them when they got to a place called the Birches, opposite Bird's Hill, Pembina Branch now. I think it was the following year they made the same pretext, and said there was not six feet of water in the rapids ; I said there was, they said there was not. It was a question of assertion ; and I hired a small steamboat and had a beam stretched across her forty feet long, and had teeth put into it like a rake three feet apart, and made her go down the river from here to Selkirk, and took the levels in the river when she went down, and there was no denying that there was eight feet of water, without any boulders to strike the teeth three feet apart, and by that means I got the rails, 900 tons, down to Selkirk. Then the water fell to the level that we knew by our levels would not leave more than six feet over some of the boulders, and I ceased to insist. But my own impression is that the difficulty was not so much that they could not go down, as that having gone they had not the power to tow their barges back again up the rapids."

In June, 1876, the following letter was sent from the Department to the contractors :—

" OTTAWA, 15th June, 1876.

" SIR,—The Department is advised that steel rails have been taken to Winnipeg, but that none have been delivered at Selkirk below the rapids. As the Department had a right to expect that an effort would be made to transport at least a portion of them to the latter place, will you please communicate to me when you anticipate that this delivery will be effected.

" I have the honour to be, Sir,

" Your obedient servant,

" F. BRAUN,

" Secretary.

" N. W. KIRKSON, Esq.,

" General Manager Red River Trans. Co."

The deliveries under the contract were as follows :—

	Tons.	Lbs.
During 1875, at Pritchards, 9 miles north of Winnipeg.....	2,378	1,360
1876, Selkirk,.....	918	465
St. Boniface.....	11,839	926
1877 “ 	271	1,086
1878 }	414	288
1880 }		

For delivery at St. Boniface, the prices of Messrs. Fuller & Milne were \$1.50 per ton less than of these contractors.

That difference in the quantity delivered there would amount to about \$18,800 American currency.

The discount on American currency varied during the period of the payments under that contract, falling gradually from 13½ per cent. in the first year to about 4 per cent. in 1877, and after that there was no discount.

The offer of Messrs. Fuller & Milne was intended, and could have been ascertained to mean the long ton instead of the short ton. That would give about 1,696 fewer tons to be paid for, which, under this contract, cost \$25,440 American currency.

On 19th April, 1877, Mr. Fleming reported that about 11,000 tons were wanted at Selkirk for section 14, of which quantity only 918 tons had reached there ; and he stated that this same company of contractors offered to take the rails from where they had been left to Selkirk, at \$2.13 per ton, which, with handling, &c., he said would probably increase the cost of the second moving to \$3.00 per ton.

This left 10,082 tons to be moved forward to Selkirk from the places at which they had been deposited under this contract.

It is manifest that it would have been a saving to get the service done and the delivery effected under the Fuller & Milne offer instead of the way in which it was subsequently accomplished. The handling alone was an item of some thousands of dollars, but the exact loss cannot be calculated under the circumstances, because the service was not performed by contractors—it was done by building the North Pembina Branch under contract 5 A, and taking the rails over that.

So far our remarks have been made as if it had been possible to get for the whole quantity terms as favourable as those offered by Messrs. Fuller &

Milne for the first 5,000 tons. We have no means of ascertaining whether this was possible. No competition was invited. The price named by Mr. Kittson in 1875 and in 1876 was the same, and as before mentioned the transaction has been treated in the books of the Department as an enlargement of the contract made with his Company in 1875.

The difference between the direct money outlay upon the whole quantity at Mr. Kittson's prices, and of those of Messrs. Fuller & Milne, would be about \$44,000 American currency.

Assuming that the comparison should be made only in the quantity named by Messrs. Fuller & Milne in 1875, the direct loss would be on 5,000 tons instead of on 15,822, and would be diminished in that proportion.

This, however, is without taking into account the consequences of the failure of the Red River Transportation Company to deliver at Selkirk, as proposed to be undertaken unconditionally by Fuller & Milne.

The expenditure under this contract was as follows:—

30th June, 1876.....	\$ 80,865 38
“ 1877.....	125,985 12
“ 1878	3,563 70
“ 1879.....	3,514 04
<hr/>	
Total.....	\$212,928 24

CONTRACT NO. 19.

Construction of an Engineer's House.

By this contract, dated 3rd June, 1875, Moses Chevette agreed to perform the work described in specifications attached to the agreement, including amongst other things, the building of an Engineer's house at Read's, near Kaministiquia Bridge, for the price of \$1,600.

The contract was let under the supervision of the Engineering Department, and, according to the evidence, was made without giving the contractor any undue advantage or causing unnecessary expense. It was duly fulfilled, and the amount mentioned in the contract was paid without extras before the 30th June, 1876.

CONTRACT No. 20.

Transportation of Rails.

By this contract, dated the 29th day of July, 1875, the Merchants' Lake and River Steamship Company covenanted to transport during the navigation of 1875, from Montreal to Duluth and Fort William, or either of them, or part to one and part to the other, 5,000 tons of rails and accessories, at the price of \$6 20 per ton of 2,240 pounds.

In this case the agreement was made by correspondence, and covered the transportation and other services connected with it of about 10,391 tons of rails and their accessories, from Montreal to Fort William or Duluth, at the rate of \$6.20 per ton.

Competition for this work was invited by advertisement, dated 1st April, 1875, which named the 19th of that month for the receipt of tenders—several offers were duly received by the Department and reported on, but the result of the competition was not adopted as a basis for an agreement owing to the preference of spontaneous offers made at different times by Messrs. Cooper, Fairman & Co., who took no part in the said public competition.

On the day after that named for the final receipt of tenders, the following report of their contents was made to the Department:—

“TENDERS FOR TRANSPORT OF RAILS TO LAKE SUPERIOR.

A. Charles Stephenson, Kingston, per ton.....	\$6 50
B. C. Edwards, Kingston, per ton.....	6 25
C. T. H. Beatty & Co., Thorold, per ton.....	7 00
D. Holcomb & Stewart, Kingston, per ton.....	6 74
E. W. H. Perry, Buffalo, per ton.....	7 00
F. G. E. Jaques & Co., Montreal, per ton.....	6 30
G. Cox & Green, Montreal, per ton.....	6 50
H. E. Samuel, Montreal, per ton.....	6 00

Opened by

“F. BRAUN, *Secretary*.

“F. H. ENNIS.

“DEPARTMENT OF PUBLIC WORKS,

“OTTAWA, 20th April, 1875.”

Three days after the opening of the tenders Messrs. Cooper, Fairman & Co., addressed the following letter to the Deputy Minister:—

“MONTREAL, 23rd April, 1875.

“DEAR SIR,—Owing to our having tendered, and the Department having accepted, the tender for delivery from “Montreal” to the “West,” we have become committed in matter of

charter, &c., for delivery of from (10,000 to 12,000) ten to twelve thousand tons rails, shipment to begin immediately. We therefore beg that you would advise to what ports you wished the first lot shipped and the quantities required at each place. We have advice from the Mersey Company that we will have about 2,000 tons here by the 1st of May. We also understand that you require *cartage, handling and piling* to be done by the shippers, which was not included in our tender, but we would be pleased to attend to these for an additional sum of (60) sixty cents per ton, making a total of \$6.20 per ton gross for carting, handling, insurance, piling, &c. Your early reply will oblige.

"COOPER, FAIRMAN & CO.,

"Representing the Merchants' Lake and Steamship Line,

"Consisting of eighteen first-class Propellers.

"T. TRUDEAU, Esq.,

"Deputy Minister Public Works,

"Ottawa."

The contention here set up by Messrs. Cooper, Fairman & Co. is shown by the records of the Department to be without foundation, and it is to be remarked that they were silent concerning it during the period which elapsed from the date of the advertisement until three days after the opening of the tenders, and after the report upon them had been made to the Department. They made their claim, however, before the Department had taken action with any of the regular tenderers. The allusion in their letter to the acceptance of the tender for delivery from "Montreal to the West" pointed to tenders which they had made in November, 1874.

As mentioned in our report on steel rails, 1874-75, the advertisement issued by the Department in the fall of 1874, called for tenders for delivery at Montreal and at no other place, notwithstanding which fact Messrs. Cooper, Fairman & Co. sent in tenders in their own name for delivery at other points as follows:—

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver, f.o.b., Liverpool, during the season of navigation, in the year 1875, in accordance with the annexed specifications and conditions, 5,000 to 10,000 tons 'Mersey' or 'Bolton' brand Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates:—

"Per ton of 2,240 lbs.—Bessemer steel rails and fish-plates, at £10 10s. 01. sterling; iron bolts and nuts at £19 10s. 0d. sterling.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastening, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery of the above at some good port in Vancouver Island, B.C.:

	Per Ton.
Bessemer steel rails, at.....	£13 5 3 stg.
Fish-bolts, at.....	22 5 3 stg.
"COOPER, FAIRMAN & Co.,	
"Montreal."	

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf at Duluth, or Thunder Bay, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, 5,000 to 10,000 tons, brand 'Mersey Steel and Iron Co.,' Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :

"Per ton of 2,240 lbs., Bessemer steel rails and fish-plates, at £12 6s. 0d. sterling; iron bolts and nuts, \$107 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete the contract. We would also tender for delivery at French River, at a reduction of two shillings per ton on above prices, any wharfrage or harbour dues on ports payable by Government.

"COOPER, FAIRMAN & Co.,
"Montreal."

It is plain that these offers were not within the terms of the advertisement. Nevertheless, Mr. Fleming included the result of them in his report of the 19th November, 1874.

In a separate envelope a tender for 10,000 tons had been made at that time, in pursuance of the terms of the advertisement, by the Mersey Steel and Iron Company, as follows :—

"(Form of Tender.)

"PUBLIC WORKS OF CANADA.

"TENDER FOR FISH-JOINTED BESSEMER STEEL RAILS.

"The undersigned hereby tender to deliver on the wharf, at Montreal, during the season of navigation, in the year 1875, in accordance with the annexed specification and conditions, five to ten thousand tons Bessemer steel rails, with proportionate quantity of fish-joints, at the following rates :—

"Per ton of 2,240 pounds—Bessemer steel rails and fish-plates at £11 3s. 0d. sterling; iron bolts and nuts, at \$101 currency.

"The undersigned are ready to enter into contract for the manufacture and delivery of the above rails and fastenings, or so much thereof as may be required, and will satisfy the Minister of Public Works as to their ability to complete contract.

"THE MERSEY STEEL AND IRON CO. OF LIVERPOOL,

"Per COOPER, FAIRMAN & Co., Agents,
"Montreal."

On 2nd December, 1874, the following letter was addressed to Messrs. Cooper, Fairman & Co. :—

“ OTTAWA, 2nd December, 1874.

“ GENTLEMEN,—The tenders you have made on behalf of ‘The Mersey Steel and Iron Company’ of Liverpool, for the supply of steel rails, &c., having been accepted, I am directed to send you the enclosed draft articles of agreement, and to request you to have the kindness to have them executed by the Company, and to then return them to me.

“ I have, &c.,

“ F. BRAUN,

“ *Secretary.*”

“ MESSRS. COOPER, FAIRMAN & CO.,

“ Agents, Montreal.”

The evidence shows that the acceptance here notified was intended to be not only of the offer by the Mersey Company for 10,000 tons, to be delivered at Montreal according to the advertisement, but of an additional 10,000 tons covered by the offer of Messrs. Cooper, Fairman & Co. for delivery on the western lakes, and made as aforesaid without competition public or private. Agreements were prepared and forwarded to be executed by the Mersey Company as if that Company had, in their own name, tendered for delivery of 10,000 tons at ports on the western lakes as well as 10,000 tons at Montreal.

The evidence shows that the Mersey Company repudiated the authority of Messrs. Cooper, Fairman & Co. to make an offer on their behalf either for delivery on the western lakes or for bolts and nuts, which latter articles had been included in the tender signed in the name of the Mersey Company by Messrs. Cooper, Fairman & Co., as their agents, in the November competition.

On January 4th the following telegram was received at the Department :—

“ OTTAWA, 4th January, 1875.

“ *By Telegraph from Montreal.*

“ Mersey Company have signed tender delivered only at Montreal. Cannot now deliver West. Above received by cable.

“ AGENTS MERSEY CO.

“ HON. A. MACKENZIE.”

Mr. Mackenzie, in his evidence, stated that this signature “ Agents Mersey Co ” meant Messrs. Cooper, Fairman & Co.

Subsequently to the above telegram the Minister was informed that the Mersey Company had declined to fulfil the offer made in their name by

Messrs. Cooper, Fairman & Co. concerning bolts and nuts, as shown by the following letter :—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—In the contract for steel rails, &c., with the Mersey Steel and Iron Company they make strong objections against having bolts and nuts included in their contract, and they were accordingly left out. The price was to have been (\$101) one hundred and one dollars per gross ton, delivered in bond at Montreal.

“We, as agents for Messrs. Robb & Co., of the Toronto Bolt and Nut Works, beg to supply the Laird bolts and nuts as per sample bolt, to be furnished by the Inspector, Mr. C. P. Sandberg, of London, the price to be (\$101) one hundred and one dollars per gross ton, *duty paid*, delivered in Montreal or Toronto.

“We are, dear Sir,

“Yours, &c.,

“COOPER, FAIRMAN & CO.,

“Agents for ROBB & Co.

“The Minister of Public Works,

“Ottawa.”

The contention put forward by Messrs. Cooper, Fairman & Co., in their letter of the 23rd April, above mentioned, was thus based upon the fact that they had in November preceding made a spontaneous offer in their own names for the delivery of 10,000 tons at ports on the western lakes, points at which no delivery had been submitted to competition; that this offer was accepted in its entirety and connected with an offer of 10,000 tons made within the terms of the advertisement by the Mersey Company for delivery at Montreal, these two quantities of 10,000 tons, each being included in one contract, intended to be executed by the Mersey Company in England. It was after the Department had become aware that the Mersey Company had repudiated the offer for delivery on western lakes, and after the result of a public competition for the same work had become known to the Department, that Messrs. Cooper, Fairman & Co. advanced this claim in their letter of the 23rd April, which had the effect of interrupting negotiations with tenderers, who had made offers in the regular way, in a public competition.

Mr. Trudeau, as a witness, states that this claim of Messrs. Cooper, Fairman & Co., was, in his opinion, not a good claim.

Before the receipt of the letter of 23rd April, from Messrs. Cooper, Fairman & Co., the Secretary of the Department had addressed Mr. Samuel, the lowest tenderer, as follows :—

"22nd April, 1875.

"Furnish list and descriptions of vessels you intend employing; also nature of security for fulfilment of contract.

"F. BRAUN,
"Secretary.

"EM'L. SAMUEL,
"P. O. Box, 483½,
"Montreal."

After which the following communications were received from Mr. Samuel :—

"No. 110. OTTAWA, 26th April, 1875.

"By Telegraph from Montreal, 26th.

"Offer as surety D. Butters & Co., merchants. If more required can furnish security to any amount. Guarantee to ship by first-class propeller. Answer.

"E. SAMUEL.

"To F. BRAUN, Esq.,
"Secretary,
"Board Public Works."

"No. 82. OTTAWA, April 27th, 1875.

"By Telegraph from Montreal, 27th.

"Are you open to more than the quantity named in my tender? If so, please name the quantity of rails you desire carried on same terms.

"E. SAMUEL."

"To F. BRAUN."

"No. 13. OTTAWA, 29th April, 1875.

"By Telegraph from Montreal, 29th.

"Your early reply to my tender will oblige, so as to regulate movements of propellers pending arrival of rails. Security and propellers will be made satisfactory to you.

"E. SAMUEL.

"To T. TRUDEAU,
"Deputy Minister,
"Board of Public Works."

The day before the date of the last letter, the Secretary of the Department had notified Messrs. Cooper, Fairman & Co., as follows :—

"OTTAWA, 28th April, 1875.

"Minister of Public Works would be glad to see you respecting carriage of steel rails westward.

"F. BRAUN.

"COOPER, FAIRMAN & Co.
"Montreal."

On the 30th April an Order in Council was passed as hereinafter set out :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 30th April, 1875.

“On a Report, dated 29th April, 1875, from the Honourable the Minister of Public Works, stating that proposals have been invited for the transport of 5,000 tons of steel rails and fastenings from Montreal to Fort William or Duluth, Lake Superior, during the season of 1875; the price to include all cost of handling, piling, insurance and charges at all points, and that the undermentioned tenders have been received, viz:—

	Per ton.
1. E. Samuel, Montreal.....	\$6 00
2. C. Edwards, Kingston.....	6 25
3. G. E. Jaques & Co., Montreal.....	6 30
4. Chas. Stephenson, Kingston.....	6 50
5. Cox & Green, Montreal.....	6 50
6. Halcomb & Stewart, Kingston.....	6 74
7. J. H. Beatty & Co., Thorold.....	7 00
8. W. F. Perry, Buffalo.....	7 00

“That in a tender made in November last for the supply of steel rails Messrs. Cooper, Fairman & Co., agents, stated the difference in price for delivering those rails in Montreal or Duluth and French River would be \$5.60 per ton exclusive of any harbour or wharfage dues at the ports named.

“That those gentlemen now offer on behalf of the Merchants' Lake and Steamship Line, (consisting of eighteen first-class propellers) for an additional sum of not more than sixty cents per ton to the price of \$5.60 asked in their tender of November last, or say a total sum of \$6.20 per ton, to undertake the transport of 5,000 tons of steel rails from Montreal to Fort William or Duluth, and assume all cost of handling, piling, insurance and charges as required by the advertisement.

“That Mr. E. Samuel, who is the lowest bidder on the list given above, is not a steam-boat owner.

“The Minister, therefore, recommends that the offer of Messrs. Cooper, Fairman & Co., be accepted.

“The Committee submit the above recommendation for Your Excellency's approval.

“Certified,

“W. A. HIMSWORTH,

“Clerk Privy Council.”

The \$5.60 referred to in this Order in Council is apparently the difference between £11 3s. sterling equal to \$54.26, at which price an offer had been made on behalf of the Mersey Co. for delivery at Montreal, in the November competition, and £12 6s. sterling, equal to \$59.86, at which price, in their own name, Messrs. Cooper, Fairman & Co. had then offered delivery on the western lakes.

Mr Fairman stated, in evidence, that when his firm wrote this letter, on the 23rd April, they were not owners, or part owners, of any steamboat line, and according to the evidence before us, the offer of Messrs. Cooper, Fairman & Co. in their own name was accepted on the 2nd December, 1874, for delivery on western lakes without any ground for supposing them to be owners of any steamboat, or to be representing any such owner. As far as we can judge from the evidence, the tender of Mr. Samuel was not refused because he was not a steamboat owner, but upon the assumed ground that Messrs. Cooper, Fairman & Co. had a claim to the contract for transportation in consequence of the notification aforesaid made by the Secretary of the Department, on the 2nd December, 1874, concerning tenders made on behalf of the Mersey Co. In our judgment Messrs. Cooper, Fairman & Co. had not, under the circumstances, a claim to the contract for transportation as asserted by them.

On the 5th May, 1875, the Secretary of the Department notified Mr. Samuel as follows :—

“OTTAWA, 5th May, 1875.

“SIR,—Referring to your telegram of the 29th ult., relative to your tender for the transport of steel rails westward, I am to inform you that the Minister of Public Works has made other arrangements for this service.

“I have the honour to be, Sir,

“Your obedient servant,

“F. BRAUN,

Secretary.

“E. SAMUEL, Esq.,
“Montreal.”

A week afterwards Mr. Samuel addressed the following letter to the Secretary of the Department :—

“No. 65.

OTTAWA, 12th May, 1875.

“*By Telegraph from Montreal.*

“SIR,—For reasons unnecessary to state, I beg to withdraw my tender for transport of railway iron for Lake Superior ports.

“E. SAMUEL.

“To F. BRAUN, Secretary B. P. W.”

The day following this the Secretary of the Department sent the following communication to the successful firm :—

“OTTAWA, 13th May, 1875.

“The carriage of five thousand tons (5,000) of steel rails and accessories from Montreal to Duluth, or Port William, for six dollars and twenty cents, including all charges, is awarded to you. A contract will be prepared.

“F. BRAUN.

“COOPER, FAIRMAN & Co.,
“Montreal.”

On the 10th of the following month a new spontaneous proposal was made by Cooper, Fairman & Co, and accepted by the Department. It is shown in the two following letters :—

“ MONTREAL, 10th June, 1875.

“ DEAR SIR,—We hereby agree as agents of the Merchants' Lake and River Line of steamer's to carry from ten to twenty thousand tons of steel rails, on the same terms and conditions as former contract, namely, at six dollars and twenty cents currency per gross ton for Duluth and Fort William, on Lake Superior, which rate includes piling at the port of delivery and insurance—said insurance we bind ourselves to effect to the entire satisfaction of the Department.

“ Yours most respectfully,

“ COOPER, FAIRMAN & CO.

“ T. TRUDEAU, Esq.,

“ Public Works Department,

“ Ottawa.”

“ OTTAWA, 10th June, 1875.

“ GENTLEMEN,—I beg to acknowledge the receipt of your letter of this day's date, offering on behalf of the Merchants' Lake and River Line of steamers to carry from ten to twenty thousand tons of steel rails on the same terms and conditions as former contract, namely, at six dollars and twenty cents, currency, per gross ton, for Duluth and Fort William, on Lake Superior, which rate includes piling at port of delivery and insurance, and to inform you that the Department accepts your offer for five thousand (5,000) tons.

“ I have the honour to be, Sirs,

“ Your most obedient servant,

“ F. BRAUN,

“ Secretary.

“ MESSRS. COOPER, FAIRMAN & CO.,

“ Montreal.”

The effect of this correspondence, as a whole, is to give Messrs. Cooper, Fairman & Co, or their principals, \$6.20 per ton for transportation of 10,000 tons from Montreal to ports on the western lakes; and it is alleged that the reason for so doing is that they were promised, in the fall of 1874, a contract for rails to be delivered at those ports at a price which, including some new items, would equal this \$6.20 beyond the price at which they then offered rails at Montreal.

In the competition in the fall of 1874, another firm, whose tender is set out at page 181, had made offers to deliver rails on the western lakes, and the result of their tender, as well as that of Messrs. Cooper, Fairman & Co., was reported on by Mr. Fleming on the 19th November, 1875. (See page 178.)

There he gives the substance of these offers as follows :—

	Tons.	Thunder Bay.	Duluth.
Post & Co.....	5,000	.....	\$58 16
“	5,000	.....	59 40
Cooper, Fairman & Co..	10,000	.....	\$59 86

This, however, does not indicate that these offers competed with each other for both places, as they did in fact. The substance of the offers from these firms, at the above-mentioned ports, was really as follows :

	Tons.	Thunder Bay.	Duluth.
Post & Co	5,000	..... \$58 91	\$58 16
“	5,000	..... 60 15	59 40
Cooper, Fairman & Co..	10,000	..... 59 86	59 86

Inasmuch as all the rails that both firms offered for delivery at Montreal, were accepted by the Government, the final cost of any portion delivered by either, at ports on the western lakes, would be, more or less, according as the highest or lowest price was paid for the transportation of any portion of them to those ports.

No competition had been invited for delivery on the western lakes by the advertisement in the fall of 1874, but if the Department desired to accept any spontaneous offer concerning this matter, the tenders before them on the 19th November, 1874, showed that Messrs. Post & Co. had offered 10,000 tons for delivery at Duluth, or 5,000 at Duluth and 5,000 at Thunder Bay, at prices lower than those named by Messrs. Cooper, Fairman & Co., and adopted in the notification of Mr. Braun on the 2nd December, 1874, which has been made the ground for giving that firm this contract.

Although the correspondence above mentioned covered two separate quantities of 5,000 tons each, the formal contract referred to at the head of this report, and dated subsequently to the closing of that correspondence, named no more than 5,000 tons. The quantity actually transported was about 10,391 tons.

Mr. Trudeau, in his evidence, said that subsequent events have shown that, if in 1874 the tender made by Post & Co. had been accepted, the cost of the 10,000, if delivered at Duluth, would have been decreased by \$12,400, and if at Fort William, by \$4,900.

As a fact, about 5,349 tons of rails and accessories were delivered at Duluth and about 5,477 at Fort William, upon which, at the rates stated by

Mr. Trudeau, the loss occasioned by accepting the offer of Cooper, Fairman & Co., in preference to the lower one of Post & Co., was over \$9,000.

We conclude from the evidence that, in this contract, the contractors got an undue advantage, namely, a higher price than that at which other tenderers had offered to do the work bargained for. The evidence discloses no reason for refusing the lower offer of Post & Co.

The work having been completed, the following sum was paid on the contract: \$67,126.28.

CONTRACT No. 21.

Movement of Rails.

By this contract, dated the 9th August, 1875, Patrick Kenny undertook to remove all the steel rails that would be landed from sea-going vessels in Montreal during that year's navigation, and to lay them on the ground at the Rock Cut, on the Lachine Canal, at the rate of 80 cents per ton.

The work under this contract was let by public competition. The Deputy Minister, on the 14th July, 1875, instructed Messrs. Morin & Co., of Montreal, to call for tenders. Advertisements were accordingly issued stating that tenders would be received by Messrs. Morin & Co., up to noon of the 19th July. On the 20th July, Messrs. Morin & Co. reported that they had received, up to the time named in the advertisement, 16 tenders, of which two named 80 cents per ton for the work to be performed, one by Messrs. Holcomb & Stewart for a quantity of 5,000 tons, and the other by Patrick Kenny, without limiting the quantity. The contract was awarded to the latter, who had, in our judgment, made the best available offer for the Department.

After about 11,000 tons had been removed, the work was not proceeded with, because the Department was led to the conclusion that it would be more economical to transport the balance, as they arrived, to a point further west.

A claim is made by the contractor against the Government for damages occasioned by the stoppage of the work contrary to the meaning of the contract, and at the date of our commission the claim was not settled. The amount paid under the contract up to the 30th June, 1880, was \$8,782.11.

CONTRACT No. 22.

Transportation of Rails.

In this case there is no formal contract. The correspondence between the Department and the contractor, shows that Messrs. Holcomb & Stewart undertook to transport from 1,000 to 10,000 tons of steel rails from a wharf or ship's side in Montreal to Kingston, at the price of \$1.30 per ton or less, upon the terms and conditions hereinafter set out.

Competition was invited by the Chief Engineer at the request of the Deputy Minister of the Department. This was done by a telegram to each of the following forwarders :—

D. McPhie.....	Montreal
Millar & Jones.....	Montreal.
Jacques & Co.....	Montreal.
Holcomb & Stewart.....	Kingston.

The request for competition was in the following words :—

“ At what rate per long ton would you take rails from wharf or ship's side, Montreal, and deliver them at the Penitentiary wharf, Kingston ? ”

The answer from each of the firms addressed as aforesaid is shown by the report upon the subject by the Chief Engineer, dated 20th September 1875, and hereinafter set forth. The answers showed that Messrs. Holcomb & Stewart made the offer which was most favourable to the Government.

Before this competition was invited, Mr. Leonard G. Bell had been directed to examine into the matter and report upon the expediency of storing the rails at Kingston rather than at the Lachine cut at Montreal, to which point Mr. Kenny, under a previous contract (No. 21), had been delivering them. Mr. Bell's report upon the subject having been considered by the Chief Engineer, he, on September 14th, 1875, had recommended that the forwarding should be awarded by competition in the way in which it was subsequently accomplished. Mr. Bell's report had shown that the Warden of the Penitentiary at Kingston was anxious to obtain the work of piling and re-loading the rails, as there was then not sufficient employment for the convicts, and after the receipt of the tenders showing the offer of Messrs. Holcomb & Stewart to be the most favourable, the following correspondence took place between that firm and the Department relative to a deduction from the price named in the tender :—

" OTTAWA, September 14th, 1875.

" GENTLEMEN,—Referring to your offer of the 2nd ulto., for transporting rails, &c., from Montreal to Kingston for \$1.30 per ton, which sum to cover all expenses connected with that service, I am directed to enquire what reduction you would be willing to make from the above price if the Government assumed the expense of unloading and piling the rails.

" I have the honour to be, Gentlemen,

" Your obedient servant,

" F. BRAUN,

" *Secretary.*

" Messrs. HOLCOMB & STEWART,

Kingston, Ont."

" KINGSTON, Ont. September 15th, 1875.

" SIR,—Referring to your favour of yesterday's date, we would agree to make a reduction of Ten (10) cents per ton from our rate, provided the Government assumed the expense of unloading and piling the rails. It would not cost us this sum, as such labour is generally done by our own crews.

" As the season is far advanced, we would beg leave to press on the Department the necessity of taking immediate action. We can place capacity at once alongside the iron at Montreal for 2 to 3,000 tons. Kindly reply by return mail, or, if possible, by telegram, to-morrow.

" The writer can go to Ottawa if desired to do so.

" We remain, yours respectfully,

" HOLCOMB & STEWART.

" F. BRAUN, Esq.,

" Secretary, Department Public Works,

" Ottawa."

On September the 20th, the Chief Engineer reported as follows :—

" OTTAWA, Sept. 20th, 1875.

" SIR,—As requested by the Deputy Minister on the 18th inst., I sent a telegram to the following forwarders :—

" D. S. McPhie, St. Lawrence Forwarding Company, Montreal.

" Millar & Jones, Forwarders, do

" Jacques & Co., do do

" Holcomb & Stewart, do Kingston.

' At what rate per English ton would you take rails from wharf or ship's side, Montreal, and deliver them at the Penitentiary wharf, Kingston ? '

" I enclose herewith the replies received :—

" No. 1. From D. McPhie, offering to carry rails between the points named at \$.35 per English ton, exclusive of canal tolls.

" No. 2. From Holcomb & Stewart, offering to carry rails at \$1.30 per English ton, including canal tolls and all charges.

" No. 3. From Millar & Jones, offering to convey rails at \$1.50 per English ton.

" As the canal tolls would probably amount to about 15 cents per ton, it is clear that the offer of Holcomb & Stewart is the lowest.

"These gentlemen further propose to make a deduction of 10 cents per ton, provided the Government assume the expense of unloading and piling the rails. As the Penitentiary labour will be available for that purpose, I think, under all the circumstances, it would be advisable to accept the offer. In the event of this being done, as there is no time to be lost, I would recommend that a telegram be immediately sent to Holcomb & Stewart, so that the barges they have in Montreal ready for the work may at once be loaded. The Penitentiary authorities should also be notified to make preparations for unloading and piling the rails on their arrival.

"I am, &c., &c.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary, Public Works Department."

Upon which the contract was closed by a formal letter from the Secretary of the Department to Messrs. Holcomb & Stewart, which is set out below :—

"OTTAWA, 22nd September, 1875.

"GENTLEMEN,—Your tender of 27th August last, as modified by your letters of the 13th and 18th instant, to provide standard barge stock of from 3,000 to 4,000 tons capacity, for taking one, five or ten thousand tons of steel rails for the Canadian Pacific Railway from the wharf or ship's side in Montreal and delivering them at Kingston, in the dock yard or Queen's Wharf, or on the penitentiary wharf, has been accepted.

"The conditions are as follows :—

"That you will from time to time, during the present season of navigation (1875), provide a sufficient number of standard barges with proper steam power and transport from the port of Montreal to such wharf or wharves in the port of Kingston as the Minister of Public Works may direct, about five thousand tons (the ton of 2,240 pounds) of steel rails with their accessories, in manufacturing parcels, or such lesser or greater quantity as may be then ready for shipment.

"That you will despatch the rails, &c., without delay, and deliver and pile the same on the wharf indicated, at and for the price and sum of one dollar and thirty cents (\$1.30) per ton, which sum will cover all charges whatsoever from ship's side, including canal tolls, but insurance against damages of navigation and fire excepted :

"Provided, however, that in case the unloading at Kingston and piling on the wharf should be done and assumed by Government, a reduction of ten cents (10 cents) per ton will be made from the above rate.

"Payments to be made on production to this Department of a certificate signed by the officer of the Government at Kingston, showing the delivery there of each cargo complete in every respect.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"Messrs. HOLCOMB & STEWART,

"Forwarders, &c.,

"Kingston, Ont."

The contract having been thus awarded to the lowest available offer ; it was duly fulfilled, and up to the 30th June, 1880, the following amount was paid on account of it:—

30th June. 1876.....\$5,850.00.

CONTRACT No. 23.

Supplying Ties.

By this contract, dated 4th October, 1875, Henry Sifton and Frank Ward, under the name of Sifton & Ward, bound themselves to furnish 56,000 ties according to specifications agreed upon, at the price of 26 cents each, to be delivered upon the railway line near Prince Arthur's Landing.

This contract was let by Mr. Hazlewood, the District Engineer at Prince Arthur's Landing. The Chief Engineer sent to him, on the 25th September, 1875, the following telegram:—

“ ‘A.’ Invite tenders for ties in ten-mile sections, Fort William to Kaministiquia, to be delivered in proportionate quantities every half mile along the track. Receive tenders in ten days and forward here. A cash security of ten per cent. on contract ; amount to be deposited with the Department.

“SANDFORD FLEMING.”

On the 27th September, advertisements were issued by Mr. Hazlewood asking for tenders up to six o'clock p.m., of 2nd October, 1875. This advertisement numbered the sections 1 and 2, and asked for 28,000 ties to be delivered along each of them, stating that separate offers would be received for each section.

Twenty-four tenders were sent in. William McAlister's offer for section 1 was at 25 cents per tie, and for section 2 at 23 cents. Sifton, Ward & Co's. offer for the whole was 26 cents. All the other tenders were higher than these.

Mr. Hazlewood interpreted the telegram as directing him to close a contract, probably understanding that the words “forward here” applied to the cash security which was mentioned next after those words, and which would be forwarded only after the contract had been awarded. The intention of the Department, however, was that he should send forward the tenders for consideration at Ottawa.

There is no reason to think that the tender of Messrs. Sifton & Ward, the present contractors, would have been available for section 2 alone at 26

cents, the price mentioned by them "for the whole" distance. If it had been so available, that would have reduced the price a trifle by accepting Mr. McAllister's offer for 25 cents for section 1. As it was, we think that Mr. Hazlewood accepted the tender which was most favourable among those available to the Government. He closed a bargain and entered into a formal contract, the document above mentioned. This was forwarded by him to the office of the Chief Engineer, with the original advertisement and tenders. Mr. Fleming, on the 13th November, 1875, made the following report upon it:—

"OTTAWA, 13th November, 1875.

"SIR,—I enclose herewith a contract * * * * * made on behalf of the Public Works Department by S. Hazlewood with Sifton, Ward & Co., dated 4th inst., for the delivery of 56,000 ties on the 13th contract.

"It was not intended that Mr. Hazlewood should enter into a contract, as you will see by the enclosed telegram marked A. He was to receive tenders and forward them here. The telegram, however, as he received it, read as if he was directed to enter into contract and forward here a cash security of ten per cent.

"Mr. Hazlewood was very unwilling to assume the responsibility of making a contract, but on consultation with the Chief Surveyor and other gentlemen he felt that he could not decline without defeating the object in view, namely, to provide work for the men and horses in that locality in order to keep them there during the winter. He saw there was no time before the close of navigation to communicate with Ottawa for instructions, and thought it best to make the contract.

"I also enclose all the tenders received by him, 1 to 24 inclusive, and other papers connected therewith.

"I enclose at the same time, paper marked "C," being an order from Sifton, Ward & Co. to retain out of the monies payable to them on the 13th contract the sum of \$1,456 being the amount to be deposited as security for the performance of their contract * * * * * enclosed.

"I am, &c.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works Department."

The contract was duly fulfilled, and the following sums were paid on account of it:—

30th June, 1876.....	\$10,978.35
" 1877.....	3,669.79
Total.....	\$14,648.14

CONTRACT No. 24.

Building an Engine House.

By this contract, dated the 6th September, 1875, Adam Oliver, Joseph Davidson and Peter Johnson Brown, under the name of Oliver, Davidson & Co., agreed to erect and finish, on or before the 20th June, 1876, a house, according to specifications and plans agreed upon, receiving therefor \$3,000.

We have not been able to ascertain whether this contract was let after any competition or by accepting a single offer. It was closed by Mr. Hazlewood, the District Engineer at Prince Arthur's Landing. He seems to have been clothed with a general authority to arrange for the erection of engineers' houses.

On May the 13th, 1875, written instructions were given to him for the purpose of governing his action as district engineer, as aforesaid. The only clause in these instructions which touches the present subject, is as follows:—

"You are authorized to enter into arrangements on the most favourable terms for the erection of a sufficient number of engineers' houses at points where they may hereafter be utilized in connection with the operating of the road."

Under this authority he entered into several contracts for the construction of houses. Some of these appear among the contracts reported on in Mr. Fleming's special report of 1877, and others do not.

The practice was to place funds in the control of Mr. Hazlewood, and out of them he paid, upon some occasions, the cost of houses erected under such arrangements as were closed by him. He would be credited against the funds charged to him in this way, with such sums as he offered sufficient vouchers for. Those disbursements, not having been made through the Department at Ottawa, would not be charged against any particular contract, and thus it happened that only some of the contracts closed by him, are mentioned in the regular reports of the disbursements of the Department here. His practice as to letting by competition or otherwise was variable. For instance, on the 23rd August, 1875, he informed the Chief Engineer by letter that he had contracted with Messrs. Oliver, Davidson & Co. for building two dwelling houses at the town plot of Fort William for the use of railway employes there, and he then enclosed a copy of an offer which had been made by that firm and which had been accepted, apparently without competition.

Upon another occasion, on the 25th October, 1875, Mr. Hazlewood addressed the Chief Engineer, enclosing the copy of a contract which he had entered into with Mr. Chevrette for the erection of an engineer's house near Sunshine Creek. Upon that occasion he mentioned that he had received three tenders and showed that the contractor had made the lowest of them. Neither of these two last-mentioned bargains made by Mr. Hazlewood appears in the ordinary reports upon contracts issued by the Department. In this particular case we are not able to say whether the contract was entered into after competition or not.

A copy of the contract itself and a bond by two sureties were enclosed by Mr. Hazlewood, on the 30th September, 1875, accompanied by the following letter :—

"PRINCE ARTHUR'S LANDING,

"30th September, 1875.

"DEAR SIR,—I enclose you herewith a copy of bond and contract for the erection of an engineer's house at the town plot of Fort William.

"Yours very truly,

"SAMUEL HAZLEWOOD.

"S. FLEMING, Esq.,

"Chief Engineer, C. P. R.,

"Ottawa."

Mr. Fleming has expressed before us his confidence in Mr. Hazlewood's abilities and integrity, and upon the evidence we have no reason to suppose that the contractor in this case obtained any undue advantage, or that any unnecessary amount was paid on account of the erection of the house mentioned in this agreement.

The contract was duly fulfilled, and the following sums were paid upon it, including some extras :—

30th June, 1876.....	\$ 750 00
" 1877.....	2,383 70
" 1878.....	441 40
<hr/>	
Total.....	\$3,525 10

CONTRACT No. 25.

Railway Construction.

By this contract, dated 7th June, 1876, Patrick Purcell and Hugh Ryan covenanted that they would, on or before the 1st day of November, 1878,

complete all the excavation, grading and bridging on the line between Sunshine Creek and English River, in length about eighty miles, together with the track-laying and ballasting between Fort William and English River, and so much of the works as would allow working trains to run to the navigable waters of Lac des Mille Lacs on or before the 1st day of August, 1877, and so much as would allow working trains to run to English River by the 1st day of August, 1878, receiving therefor the prices specified in the contract for the respective kinds and quantities of work and material provided by them in carrying out the contract.

The work covered by this contract was submitted to public competition. An advertisement, dated 22nd April, 1876, was issued from the Department of Public Works, giving notice that sealed tenders for the grading from the westerly end of the 13th contract to English River, and for the track-laying and other works west of Fort William would be received up to 22nd May, 1876; and that plans, approximate quantities and other information could be had on application. On the 22nd May, above named, the tenders were opened in presence of the Chief Engineer and two of his assistants, Mr. Marcus Smith and Mr. Rowan. At the time of this opening a schedule was prepared and certified by these gentlemen. This record and the original tenders have been produced before us. There were twelve offers, varying from \$1,037,061 to \$1,635,660. The lowest was made by Mr. P. Purcell, and is the foundation of this contract.

After the contract had been awarded to Mr. Purcell upon his tender above mentioned, and after he had put up all the requisite security, but before the contract was signed, he addressed the following letter to the Minister:—

“ OTTAWA, 30th May, 1876.

“ SIR,—I beg to be allowed to associate with me Hugh Ryan, as partner in the contract for section 25 of the Pacific Railway, and to have his name inserted in the contract.

“ And oblige

“ Your very obedient servant,

“ P. PURCELL.

“ The Hon. Minister of Public Works. ”

We have taken evidence concerning the negotiations which led to the introduction of Mr. Ryan as partner in this contract. He had been interested in a tender made in the name of Brown, Brooks & Ryan, and which was considerably higher than that of Mr. Purcell. After the contract had been awarded to the latter, he asked Mr. Ryan to join him, and Mr. Ryan

consented. There is no reason to suppose that the partnership was due to any undue pressure upon Mr. Purcell, or for believing that in obtaining this contract the contractors got any undue advantage, or that the work covered by the contract could then have been provided for at a less cost than that which was promised by the terms of the agreement.

This is one of a series of contracts for distances between Lake Superior and Red River which were let upon schedules purporting to give approximate quantities of the different classes of work to be executed, upon which quantities tenders named a price for each class of work, and in which series the quantities so named were exceeded in carrying out the contract—in some cases very largely, in all to a considerable extent.

In the case of this contract the quantities furnished to tenderers were stated and the contract let before the line was located. The whole distance covered by it was something over eighty miles, but the ground over which the railway was to be made was known only to the extent of about sixty miles. A profile, but no cross-sections, had been made for that portion of the line, and for the last twenty miles or more at the western end even the centre line had not been ascertained. The work under this contract crosses a country not very rough, but much of it "is flat, dotted with rocky islands like small hills."

The system of letting contracts upon bills of work in which quantities were not given with approximate accuracy, was advocated by the Engineer-in-Chief as affording a proper means of comparing the relative ranks of tenders without any material disadvantage to the country, except in so far as a disappointment might ensue in consequence of the total outlay being larger than was to be expected from the quantities given in the schedules. We have dealt with the expediency of such a practice as an engineering question, reporting our conclusions upon it under the head of "Engineering" (page 71).

On this contract the estimated cost at the time of letting it was \$1,037,061. The cost under the last progress estimate was \$1,396,824. The difference is not to be attributed entirely to the inaccuracy of the first estimates, for ballasting and other improvements have taken place in addition to the works contemplated at the time of making the contract. There can be no doubt, however, that irrespective of extras the work intended to be provided for by the contract has cost a very much larger sum than could have reasonably been expected by the Department at the

time of making it. There are, apparently, two main causes for this: one that the nature of the material on this section was not known. Much of the embankment has been formed from excavations in muskegs in which, according to the evidence, the material when moved will furnish in the embankment not more than from 40 to 50 per cent. of its cubic contents in the place where nature placed it. The other, that the quantities named in the estimates were not correct, because no sufficient information had been obtained upon which to state them accurately, even if the nature of the material to be worked had been understood. These causes are more fully alluded to in our report upon Engineering.

There is, however, another matter touching this particular contract, and the cost which has been incurred under it, which, though somewhat within the jurisdiction of the engineers, we allude to now for the reason that it concerns the conduct of Government officers and the fair dealing of the contractors.

The measurement of the work in this case, as in all such cases, was certified to the contractor from time to time as it progressed, and on the certificates so obtained the price was paid by the Government. The measurement was here taken under the superintendence of Mr. McLennan, a Government official known as "resident engineer." It was generally made, in the first place, by one or more of his assistants and revised by himself. The measurement of a considerable portion of the work under this contract, as first certified by Mr. McLennan, has been disputed, and a re-measurement was directed to be made under Mr. L. G. Bell and another engineer who had been in no way connected with the work. We set out below the instructions of the Chief Engineer to Mr. Bell, the report by Mr. Bell, a corroboratory certificate by Mr. Mortimer who assisted him in the re-measurement, and an accompanying memorandum by Mr. Hill, who was associated with him in the work, as well as the report of the Chief Engineer in submitting the former documents to the Minister:—

" MAY 28th, 1879.

" Memorandum of Instructions for Mr. L. G. Bell.

"Mr. Bell has been appointed by the Honourable the Minister of Public Works, to re-measure the work on section 25, consisting of bridging and grading between Sunshine Creek and English River, and ballasting and track-laying between Fort William and English River.

"Mr. Bell will at once proceed to Fort William, and report himself to Mr. J. H. Caddy, the senior engineer in that district. Mr. Bell will apply for and obtain all the measurement books; copies of the monthly estimates, &c., in connection with the contract; the plans, profiles, cross sections, and all other information.

"The Engineer-in-Chief has pointed out verbally to Mr. Bell the necessity for the re-measurement of the work on this contract; explained the nature of the difficulties he will probably meet in carrying out the duty with which he is charged. In some portions of the section, particularly where muskegs prevail, it will doubtless prove a difficult task to make accurate measurements of the work that has been done. In such cases Mr. Bell must use his best judgment in making proper allowance, so as to arrive at just and fair results. As explained to Mr. Bell, in cases where the cuttings, ditches, and borrowing pits, from which material has been taken, have been disfigured or seriously altered, it may be expedient to measure the work in embankment.

"Mr. Bell will bear in mind that the object of the examination with which he is charged, is to make a verification measurement of all the works, chiefly excavation and embankment on contract 25, and the Engineer-in-Chief commends to the diligence and zeal of Mr. Bell the important duties entrusted to him. The Engineer-in-Chief confidently trusts that these duties will be performed with judgment, determination and industry, and that the information obtained will be as perfect as circumstances will admit.

"Mr. Bell will report to the head office weekly, the progress being made with all particulars worthy of note, and on completion, furnish full detailed measurements of the works, with report covering the whole.

"The Honourable the Minister has been pleased to associate with Mr. Bell, Mr. A. J. Hill, as an assistant in this important verification measurement; Messrs. C. McGammon and Wm. Fraser are appointed rod-men.

"The Department will furnish Mr. Bell from time to time, with funds to carry on the service, and while the Engineer-in-Chief refers him to the rules established by the Department with respect to the making of payments, the keeping of accounts and the character of vouchers, &c., attention is directed to the necessity of exercising economy in personal expenditure.

"SANDFORD FLEMING,

"Engineer-in-Chief."

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, 17th April, 1880.

"Sir,—I have the honour of reporting that the work of re-measuring contract No. 25 that was entrusted to me by the Hon. the Minister of Railways and Canals, has now been completed, and I have now to lay before you the accompanying statements of the quantities of excavation by which you will see that according to my measurements the work done in the following items is less than what the engineers in charge have returned it by the following amounts:—

	Cubic yards.
"Excavation in solid rock.....	23,713
" loose rock.....	103,342
" earth in line, cuts and borrows.....	305,961
" off-takes.....	30,852
"Total.....	463,868

"These great differences are, I believe, due partly to the measurements of the engineers in charge having been made on what I consider an erroneous basis, and partly to what I consider a very grave misinterpretation of the clauses of the specification describing what is to be classed as loose rock and solid rock.

"I did not measure the rip-rap on the contract, but I took notes of a considerable quantity of work done which has been returned by the engineers in charge as rip-rap, which, in my opinion, ought not to be so classed, and for which there ought to be a reduction in that item of 1,722 cubic yards.

"In numerous places the engineers in charge have made "allowances," many of which I believe ought not to be admitted. Some others may be admitted, but the amount is relatively very small.

"I have measured also the several ballast pits on the contract, and estimated the quantity taken out of each pit up to the date of my measurement of it. But as the work was then in progress in three distinct pits and continued so for some time longer, I am able to give only a check on the measurements of the engineers in charge at the time of my measurement, which check indicates satisfactorily that the engineer's measurements were then practically correct for progress estimates.

"Mr. A. J. Hill, C.E., was associated with me in the work of re-measurement, and in all respects he concurs with me in the measurements and classification of work. In all our work we acted under a desire to give full and liberal measurements, and we spared no pains to obtain accurate and reliable results.

"I have the honour to be, Sir,

"Your obedient servant,

"LEONARD G. BELL.

"I have read the above report, and hereby confirm all that Mr. Bell has said in it.

"ALBERT J. HILL"

CANADIAN PACIFIC RAILWAY.

Contract No. 25.

Quantities of Excavation, exclusive of that for foundations and culverts, as at 30th September 1879.

STATIONS.		EXCAVATION.				TOTALS.
		Rock.		Earth.		
From.	To.	Solid.	Loose.	Line cuts and borrows.	Off takes.	
1,685	2,215	19,140	2,261	267,352	6,671	295,424
2,215	2,810	6,414	483	182,636	483	190,016
2,810	3,275	1,335	10	143,664	613	145,622
3,275	3,825	1,703	436	215,711	13,955	231,775
3,825	545	3,295	384	178,945	12,615	195,239
545	47	12,668	406	194,800	1,193	209,067
47	560	5,790	342	193,083	9,786	209,001
560	1,206	2,081	686	172,845	8,411	184,023
		52,426	5,098	1,549,036	53,697	1,660,167

"OTTAWA, 17th April, 1880.

"We hereby certify that the above statement represents the quantities of excavation of rock and earth on contract No. 25, between 32½ and 113 miles, as measured by us up to the 30th September, 1889.

"LEONARD G. BELL,
"A. J. HILL."

CANADIAN PACIFIC RAILWAY.

Contract No. 25.

QUANTITIES of Excavation, exclusive of that for the foundations and culverts, as at 31st December, 1878, according to returns of Engineer in charge.

Stations.		Excavation.				Totals.
		Rock.		Earth.		
From	To	Solid.	Loose.	Line cuts and Borrows.	Off-takes.	
1685	2215	24,286	33,815	272,536	7,509	338,146
2215	2810	10,019	11,982	195,143	2,777	219,921
2810	3275	1,795	5,200	174,052	3,245	184,292
3275	3825	4,442	9,053	305,147	18,385	337,027
3825	545	4,795	15,173	211,672	21,571	253,211
545	47—0	20,439	25,795	215,968	2,367	264,564
47—0	560	7,058	3,377	241,627	15,111	267,173
560	1206	3 305	3,955	238,852	13,584	259,696
		76,139	108,350	1,854,997	84,549	2,124,035

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

OTTAWA, 17th April, 1880.

"SIR,—As supplementary to my report of this date, I beg leave to say that in the re-measurement of contract No. 25, Mr. H. J. Mortimer, a civil engineer of many years experience, and for several years in charge of surveys in this railway, being at the time out of employment, came with me in a subordinate capacity and wrought in the measurements. As he has had considerable experience in works, I had frequent conversations with him on points wherein I differed from the engineers in charge of contract No. 25, and he fully agrees with me in all I have done in the measurements and classification.

"I have the honour to be, Sir,

"Your obedient servant,

"LEONARD G. BELL.

"I have read the above and I hereby confirm all that Mr. Bell has said in it.

"HENRY J. MORTIMER.

"SANDFORD FLEMING, Esq."

OTTAWA, 18th April, 1880.

"SIR,—As requested by you, I beg to submit the subjoined memorandum of the methods employed in the re-measurement of contract 25, Canadian Pacific Railway, and of facts noted during the progress of the work which do not elsewhere appear.

"At the commencement of the work, the duty was assigned to me of the measurement of excavation generally, including side ditches, borrow pits, line cuttings and outfalls. Mr. Bell supervised the chainage, centres, levels and classification, and Mr. Mortimer, commissariat and transport. I was accompanied throughout by Mr. C. L. McCammon as rodman, with two of the most intelligent men of the party as tapemen, the latter being occasionally changed as the exigencies of the work required.

"In cross-sectioning line cuttings the zero of the tape was invariably held at the top of the south slope and the distance of each sight from that point noted, the centre of the track being always entered in its proper place.

"Where rock occurred, the junction with the earth slope, top of rock slope, bottom of water table, were taken, and in all cases sections were taken at such distances on the centre line as to ensure accuracy of measurement as far as possible.

"When water tables were silted in, holes were dug to the rock, and also the rock at formation laid bare.

"Ground and rock surfaces were plotted in the office from the original cross-sections. All borrow pits where practicable, were carefully cross-sectioned at short intervals and wherever stakes could be found the sections were referred to original data. In many of the borrow pits quantities of boulders were left lying, which were carefully estimated and noted to be deducted.

"In taping ditches, zero of the tape was always carried at the off-side. The exact width of the ditch to the nearest tenth was first taken, called, noted and repeated. The tape was then carried back on each side till clear of any depression due to teaming, walking or other causes near the edge, and drawn taut. The levelling rod was then set upon the bottom in one or more places as seemed necessary or possible and the average depth as shown by the stretched tape called, recorded and repeated as before. The sides of the ditches in muskegs are practically plumb; where sloped in ordinary ground the average of two measurements of top and bottom was always taken.

"Where the bottom was soft the rod was forced down till considered to have reached the original bottom as cut, care being always taken by Mr. Bell's directions to measure liberally and give the contract the benefit of any doubt.

"In a few cases where, owing to the sinking of the bank, the side ditches had been disturbed to such an extent as to render the tape measurement untrustworthy, the fact was noted and the original estimates allowed. This occurred in two or three places of small extent.

"Where, as frequently occurred, the boulders met with in the excavation of the borrow ditches were not removed, and which often amounted to a large percentage of the total excavation, their cubic contents were carefully noted for deduction.

"In a few cases in which the ditches either from being irregularly cut or subsequently washed out, could not be satisfactorily taped, the corresponding embankment was cross-sectioned as a check.

"When silting of ditches was apparent, holes were dug through the foreign soil and the depths taken on the original bottom. The total possibility of error from this source, however, was very trifling, the ditches being generally cut clean and plumb, with bottoms firm and even rendering accurate measurements easy.

"In many instances packing upon the sides of the ditches had been resorted to which, undetected, would have the effect of increasing the measurements, and in several cases, notably in a large muck borrow at Upsala, under packing had been extensively carried out by lifting the turf and introducing sods of from four to six inches thick, which were then mostly trimmed and faced so as to almost defy detection.

"On many of the muskegs, moss from one to two feet deep occurs, over the peat, in measuring which we allowed it compressed about two-thirds.

"In order to test the possibility of the ditch depths being affected by the draining of the adjacent muskeg, we frequently took cross-sections of from 600 to 800 feet across the track and ditches, at points most favourable for the detection of subsidence from this cause, which however, never revealed any appreciable difference of level, due to drainage. The only exception, and that in my opinion a doubtful one, is at the diversion of Mud River, which I believe follows one of the many natural depressions in this vicinity. The bottom of the ditch is generally solid and firm and the sides plumb and solid, both showing distinctly the spade marks though subjected for a long time to a pretty rapid current. The discrepancy in the quantities I look upon as suspicious, in view of the fact that a branch out-fall of almost equal dimensions through the same muskeg shows only a moderate excess.

"Our method in measuring out-falls was to tape and stake the entire length of the ditch downwards, taking the sectional area at every one hundred feet or oftener on the return.

"A portion of the rock from the line cuttings has been put in embankment, but by far the greater part has been wasted either by being thrown * over the sides of the previously finished embankment or carted out right and left at the cutting. At Upsala Lake and a few other points the broken rock thrown over the embankment has been returned as rip-rap. In addition to the waste of rock, the amount of earth waste upon the line is very large and in many cases, I think, unnecessarily and uselessly so.

"I am, dear Sir,

"Yours very respectfully,

"ALBERT J. HILL.

"SANDFORD FLEMING,

"Engineer-in-Chief,

"Canadian Pacific Railway."

"* It is comparatively rare to find the material of a rock cutting put into embankment, though, as mentioned above, in some cases it is utilized. The usual course appears to have been to waste the rock cuttings and form the embankments from side borrow. The excessive quantity of loose rock returned may be accounted for by the custom of allowing a percentage of loose rock in cuttings and borrows, where, according to the usual interpretation of the specification, none existed, as for instance in the large gravel cut at Upsala, and by the apparent estimate and return of boulders of all sizes in borrow ditches and pits, which were never moved nor utilized for construction purposes.

"The cutting at Upsala consists of a coarse gravel in which there appears to be but few boulders above the size of a man's head. In this cut 40 per cent. of loose rock has been allowed in the original measurements.

"A. J. H."

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, May 19, 1880.

"SIR,—I beg to submit the following documents relating to the re-measurement of work on section No. 25 :—

- "1. Copy of instructions to L. G. Bell, (A).
- "2. Joint Report of L. G. Bell and A. J. Hill, (B).
- "3. Letter from L. G. Bell, (C).
- "4. Letter from Albert J. Hill, (D).

"The re-measurement does not confirm the accuracy of the returns previously received of work executed. According to this examination it appears that the total quantity of excavation done on section 25 is 463,868 cubic yards less than that covered by the certificates issued in the contractor's favour. This is made up of the following classes of work :—

"Excavation in solid rock.....	23,713	cubic yards.
" " loose rock.....	103,342	"
" " earth in line cuts and borrows.....	305,961	"
" " off-takes	30,852	"
Total.....		463,868 cubic yards.

"In the matter of the earth which embraces a certain proportion of muskeg work, I understand from Messrs. Bell and Hill that in the quantities now furnished they have made no deduction for the shrinkage of that material. The discrepancy is therefore very serious and calls for further investigation.

"I am, etc.,

"SANDFORD FLEMING,

"Engineer-in-Chief.

"The Honourable Sir CHARLES TUPPER, K. C. M. G.,

"Minister of Railways and Canals."

The difference between the original measurements by Mr. McLennan and those by Mr. Bell is serious. If Mr. Bell's quantities are correct the amount of the contractors' claim would be largely reduced. Mr. Bell reports that in the following classes of work his measurement is less than that previously allowed by Mr. McLennan to the extent below stated, namely :—

Excavation in solid rock.....	23,713	cubic yards.
" " Loose rock.....	103,342	"
" " Earth in lime, cuts } and corrows... }	305,961	"
" " Off-takes.....	30,852	"
Total		463,868 cubic yards.

And he also suggests a further reduction of 1,722 yards of rip-rap. At the contract prices these reductions would lessen the cost of the work as follows:—

Excavation in solid rock.....	\$35,569
“ “ Loose rock.....	93,007
“ “ Earth in lime, cuts and borrows...	100,967
“ “ Off-takes	10,798
<hr/>	
Total.....	\$240,841

Mr. Bell mentions in his report two origins for the discrepancy, one an error in the basis on which the first measurements were made, and one a misinterpretation of the clauses in the specifications concerning loose rock and solid rock. If he means by “misinterpretation” that executed quantities of one kind of rock were improperly certified under the head of another kind, that might have given to the contractors too high or too low a price for the class of material which they had moved, but it would not affect the total cubic contents of the rock which had been excavated under one or the other class. Therefore the fact of the discrepancy of 463,868 yards would stand altogether unexplained.

The other cause to which he alludes is the “erroneous basis,” meaning we presume, for no other reason could account for the discrepancy, that work had been certified to have been done which had not been executed in any class.

We examined witnesses at some length on the subject of this disputed measurement, not because we intended to decide finally upon the claims of the contractors to have it allowed, but that we might be informed upon the course which had been adopted by the resident engineer and his assistants while in charge of the public interests.

Under some of the other contracts the works had cost much more than was expected, because of the sinking of the abutments at rivers and lakes on which foundations for the embankments had been placed. In this case no great disappointment resulted from such a cause. The material which has led to the excess in the expenditure under this contract is found in swamps or muskegs. The nature of the contention of those who uphold the correctness of Mr. McLennan's measurement, is that the effect of excavating muskeg material and placing it in the embankment, is to change the configuration of the particular spot from which it is taken, as well as the

general surface in the neighbourhood of the embankment, so much as to make it impossible, after the lapse of several months, to ascertain with anything approaching accuracy the shape of the original surface of the ground, and that without knowing that there are no data from which to judge of the quantities which had been removed.

It is the practice of engineers, in setting out works for forming the road-bed of railways, to take levels at the centres and sides of the cuttings and of the embankments, as well as for the lateral and off-take drains. These levels, being stated with reference to a given datum, are carefully recorded and preserved for future reference, and they form data from which, at any stage of the work or after its completion, the quantities removed can be calculated with accuracy by the process of running a new set of levels over the same ground. In ordinary cases this process holds good, and the results are indisputable.

We have examined witnesses at some length on the subject of this measurement and re-measurement. Mr. Hugh Ryan, one of the contractors, Mr. McLennan before mentioned, Mr. Caddy, who was engineer-in-charge of the works at a later date, and Mr. Schreiber, the present Chief Engineer, have given evidence.

Mr. Caddy took charge when trains were running as far west as the 113th mile. He said that the construction of this contract was through a country "difficult to get into shape;" that there was a good deal of muskeg which was uneven, and sank and settled a good deal both before and after rails were laid on it.

Mr. Hugh Ryan gave much evidence in support of his contention that Mr. McLennan's measurement was correct, and that a subsequent one could not possibly be correct. He evidently expected that we would pass upon his claim against the Government concerning it, but was informed that we had no intention of so doing.

Mr. McLennan said that in forming the road-bed through the muskeg, the material taken out of the borrow pits or side ditches, was principally of a wet nature, and sometimes light. When placed in the embankment, the embankment got compressed within itself and subsided on the original surface of the soil, and he mentioned these as main reasons for the inability of any person going subsequently to make measurements, to determine where "all the lines were lost by changes of position, in both lines, side

ditches and embankments." He gave a rough estimate of the proportion of the whole excavation which was made in muskeg material, stating it as nearly one-half.

In the above report of Mr. Bell he took the measurements of the 31st December, 1878, as those whose accuracy was to be tested by him. According to the certificate of that date the whole earth material then moved amounted to about 1,939,000 yards, of which quantity Mr. McLennan's estimate above mentioned would give us the neighbourhood of 900,000 yards, as the quantity of muskeg material which had been moved on this contract up to that date.

From the opinions of all the engineers who have given evidence on the matter, this material becomes compressed in the embankment to a proportion varying between 40 and 60 per cent. of the space which it occupied in its natural position. Assuming 50 per cent. as the proportion for the present purpose, the embankments made of this material would show a cubic measurement of 450,000 yards less than the spaces from which the material was taken would show, if their outlines remained undisturbed. The contention of Mr. McLennan and of those who support his measurement is that, in fact, the outlines do not remain undisturbed, but, on the contrary, that as soon as a portion of the material is removed that which originally surrounded it moves gradually in the direction of filling up the space left by the removal, and that though the opening is not always entirely closed, it is invariably lessened to a considerable extent. Evidence has been given which shows that besides this filling-up in the immediate locality of the excavation, the drainage effected in the neighbourhood of the railway embankment, and the consequent depression caused by the weight of the embankment, has the effect of lowering the general surface of the surrounding country, sometimes to a distance of hundreds of yards. This makes the material all through that neighbourhood next the surface more compact than it was before, and so lessens the depth of any ditch or other place from which the material had been removed. It is obvious that even if the fact were established beyond question that 450,000 yards of material had been used beyond that which was expected at the time of the original bill of works, that fact would not of itself touch the difficulty of testing at any subsequent period the accuracy of the first measurement. It only bears upon it, because the same character of the material which made it necessary to increase the quantity excavated so as to supply permanently any given cubic contents in the embankment, would make it unlikely that

the sides or limits of the excavation would remain firm afterwards. In fact, in the immediate locality of the excavation the movement and compression of the surrounding material becomes certain. How far that compression would affect the cubic measurement of the spaces left after the excavation, is not shown by the effect which compression has had upon material placed in the embankment. Therefore, no figures which have been placed before us enable us to calculate the extent to which the existing state of the locality would, at any given time after the work was done, show what had taken place before the first measurement

Mr. Schreiber testified, in effect, that these conflicting measurements, when first brought to his notice, were startling to him, and he thought there was something wrong about those taken by Mr. McLennan; but directly he saw the ground he entirely changed his opinion. He then had not the slightest doubt that the ground, as he saw it, was totally different from its condition when originally measured; that it is quite consistent with the correctness of the subsequent measurements that the previous ones should also be correct under the peculiar circumstances of the case. Those circumstances were the nature of the soil and of the country through which the line ran; that when a ditch was excavated and the material placed in the middle of the bank, within a short period afterwards the sides of the ditches would close towards one another and the bottom would rise up, and so prevent the original depth being visible. In one particular case, within a week he measured a ditch in this muskeg. The day the man dug it, it was exactly 8 feet wide; one week afterwards it was 7 feet 3 inches wide. The depth of it had also changed.

We have ourselves, in passing over a portion of the railway formed of and upon material similar to this, observed the effect produced upon the muskeg by drainage and by the weight of the roadway. The side ditches were evidently changed in form, their bottoms and sides rounded and distorted from the lines by which they were originally cut, and in that way much reduced in size.

The construction under this contract affords the most striking example of the loss occasioned by the presence of muskeg, and the omission of providing for its removal at a price separate from that of earth excavation. We have hereinbefore (page 79) reported our views upon the omission of the Engineering Department, to make itself aware of the existence of this material in a country where it was so frequent as to become a prominent

feature in the construction of the whole road-bed, and upon the second omission which was a consequence of the first—namely, not inviting the tenderers to state separately the prices at which they would excavate this and ordinary earth.

Mr. Rowan, in his evidence concerning another section on which muskeg is prevalent, gave that fact as one of the main reasons why the cost of railway there had largely exceeded the original estimates, and Mr. Fleming, speaking of this section 25, and explaining that it took from two to two and a half yards of this material to form one yard of solid material in the embankment, testified that in this case the whole discrepancy between the original estimates and the quantities returned and paid for, arose in that way.

Mr. Hill's memorandum, attached to Mr. Bell's report above mentioned, alludes to instances in which packing upon the sides of excavations had been resorted to. Inasmuch as this would not necessarily be noticed by the engineers upon the spot, we did not understand that it reflected in any way upon the conduct of the Government officials, and having been led to understand that the case mentioned (in a borrow pit at Upsala) was not one of much amount, and was, in fact, concerning work done by the subcontractor and certified to by the Government engineer, we did not think it necessary to take further testimony concerning it, particularly as we had no intention of deciding finally upon the amount of the contractor's claim concerning his work.

After considering the reports by Mr. Bell and his assistants, and the evidence given before us by different witnesses, under oath, we were not inclined to impugn the accuracy or integrity of Mr. McLennan's conduct concerning the first measurement, mainly because in such a case as this is shown to be, there is, in our opinion, at a date several months after the first measurements, no tangible means of arriving at a correct measurement of the quantities originally removed.

At the date of our commission the contractors were still progressing with their work, and the dispute between them and the Government concerning this matter had not been settled, in fact they had not been informed of the result of the re-measurement by Mr. Bell.

Since taking the evidence above alluded to, a document has reached us from Mr. Bell, in which he goes into the particulars of the re-measurement by him, and his conclusions upon it, and his reasons for believing that his

is the correct measurement, very much more fully than he states them in his formal report to the Government above mentioned. He was in Ottawa during a portion of the time covered by our sittings, and after we were aware that his evidence would be desirable concerning this measurement. Owing, however, to the absence for some weeks of Mr. Miall, one of the Commissioners, immediately after the death of his father, and we being of opinion that in the absence of any one of us the others could not properly administer an oath to a witness, we deferred calling Mr. Bell. Before Mr. Miall's return, Mr. Bell left Canada on professional service in a distant territory of the United States, where he has since resided. He was led to understand, from conversations with some of us before he left, as well as by letters afterwards, that we desired to be fully informed concerning the matters within his knowledge, and he has transmitted the writing above referred to, no doubt in furtherance of what he believed to be our wishes. Inasmuch, however, as it is not accompanied by any formal affidavit corroborating its contents, and has been framed without meeting questions which have occurred to us as being proper to be answered, in order to explain fully what is within his knowledge, we have not felt at liberty to base upon his statement any finding of facts; and inasmuch as we do not propose to offer any opinion upon the amount due to the contractors concerning the work in this, or in any case, we have not thought it necessary to ask Mr. Bell to come to Ottawa to give evidence. We think it proper, nevertheless, to print his last communication in full amongst the exhibits, and it appears in the appendix.

Up to the 30th June, 1880, the following sums had been paid on this contract :—

30th June, 1877.....	\$ 335,800
“ 1878.....	687,600
“ 1879.....	241,300
“ 1880.....	81,400
<hr/>	
Total.....	\$1,346,100

CONTRACT No. 26.

Engine House.

By this contract, dated 17th July, 1876, James Isbester covenanted to furnish a ten-stall engine house at Fort William according to the specifica-

tions referred to in the contract, the same to be completed by the 1st of August, 1877, for the price of \$30,989.

The work was let by public competition. Advertisements issued by the Department gave notice that tenders would be received up to the 22nd May, 1876, and that specifications and other information could be had on application. On the day named for the final receipt the tenders were opened in the presence of the Chief Engineer and two of his assistants, Mr. Marcus Smith and Mr. Rowan. They showed five offers, varying between \$30,989 and 38,900. The lowest was made by Mr. James Isbester, and this contract is based upon it.

Mr. Fleming, in reporting upon the tenders, stated that Mr. Isbester had already erected an engine house on precisely the same plan for the Intercolonial Railway, and he recommended placing this contract in his hands.

The contract has been duly fulfilled, and the property accepted and used by the Government. There were some extras paid upon it, the whole disbursement being as follows:—

To 30th June, 1877.....	\$16,600
“ 1878.....	18,831
<hr/>	
Total.....	\$35,431

CONTRACT No. 27.

Transportation of Rails.

There was no formal document containing the agreement in this case. The substance of it is set out in a letter from the Department dated May 16th, 1876.

This contract was the result of public competition. An advertisement, dated 19th April, 1876, invited proposals for the transport of 5,000 tons of steel rails and fastenings from Montreal, Lachine or Kingston, as the Government might require, to Fort William, Lake Superior, and a further quantity, not exceeding 5,000 tons, to Duluth. Noon on the 10th May was named as the last time for receiving tenders. On the 11th May, 1876, ten tenders, all that had been received, were opened in the presence of the Deputy Minister and the Secretary of the Department. The lowest was that made by G. E. Jaques & Co., on behalf of the Merchants' Lake

and River Steamship Company, at the price named in the letter before mentioned. The lowest offer above mentioned was accepted by the following letter:—

“OTTAWA, 16th May, 1876.

“GENTLEMEN,—Referring to your tender of the 8th inst., on behalf of the Merchants’ Lake and River Steamship Line, for the transport, during the season of navigation of 1876, of about (10,000) ten thousand tons (of the weight of 2,240 pounds per ton) of steel rails and accessories from Montreal, Lachine and Kingston to Fort William and Duluth, Lake Superior, I am directed to inform you that it is accepted, the rates to be paid being as follows, viz.:—

Per ton.

From Montreal Harbour wharves to Duluth or Fort William, at the option of the Government.....	\$4 50
From Lachine to Duluth or Fort William.....	4 50
From Kingston to Fort William.....	2 75
From Kingston to Duluth.....	3 25

these rates to cover all costs of handling, piling, insurance, wharfage dues and other charges if any, at all points.

“In the event of the Government requiring to have more than 10,000 tons of rails carried to Duluth and Fort William, it is understood that you will be prepared to transport to those ports, at the above mentioned rates, any quantity of such rails up to 20,000 tons, at the option of the Government.

“You will please acknowledge the receipt of this letter and state whether you accept all its conditions.

“F. BRAUN.

“Secretary.

“To MESSRS. G. E. JAKUES & Co.,

“General Agents of the Merchants’ Lake and River Steamship Line.

“Montreal.”

Messrs. G. E. Jaques & Co., on behalf of the contractors, accepted the terms above mentioned.

The contract was duly fulfilled, and the following amount paid on it:—

To 30th June, 1877..... \$89,060

CONTRACT No. 28.

Transportation of Rails.

There was no formal contract in this case. The agreement was contained in correspondence, and was without competition.

As described in our report upon contract No. 18, an offer, made by Mr. N. W. Kittson, as Manager of the Red River Transportation Company, and dated 21st April, 1875, was accepted for the transportation of material con-

nected with the Railway from Duluth to Winnipeg and to other points, as mentioned in that report, at the rate of \$15, American currency, per ton of 2,000 pounds. In that offer he named certain conditions as controlling the liability to deliver at the point of crossing of the Railway, north of Stone Fort. During that year, about half of the quantity had been carried under that agreement.

The Chief Engineer, on the 13th May, 1876, reported to the Secretary of the Department, that 5,118 tons had been landed at Duluth the previous year, of which 2,558 had been delivered on the banks of the Red River, about eight miles from Winnipeg, and that the remainder, 2,560 tons, should be moved that spring of 1876; and he also suggested that arrangements should be made at once to take forward to Selkirk a locomotive and some flat cars, remarking that that could only be done while the water in Red River was high, and that as the river was in that condition for only a few weeks no time should be lost. The manager of the Red River Transportation Company, had, in a letter, anticipated this recommendation by offering, upon the 19th April, 1876, to the Minister, to transport railway material at rates for each article named in his letter. These rates were given for rails, chairs, joints and spikes at seventy-five cents per 100 pounds in American currency. Rates were also named for locomotives, passenger and baggage cars and box and flat cars, and he added conditions concerning the depth of water on the rapids and shoals of Red River. This offer was accepted by a letter from the Secretary of the Department naming the rates for transportation as applied to each of the articles mentioned in Mr. Kittson's letter, except rails. That item was omitted.

Although the terms of Mr. Kittson's offer of 1876 differed from that which was accepted in 1875, in respect to the depth of water in Red River, which would control his liability to perform the transportation, the work which was really done after his offer of May, 1876, has been always treated as if it had been performed under the contract of 1875; the price per ton of rails being the same in both instances, and nothing but rails and their accessories having been carried under their contract.

In Mr. Fleming's special report of 1877, he states that no work was performed under this contract No. 28 up to that date. The transaction, therefore, as carried out, has been treated by us under the head of contract No. 18.

CONTRACT No. 29.

Railway Spikes.

There is no formal contract in this case; the agreement being contained in a tender, and in the acceptance of it, as hereinafter mentioned.

An advertisement, dated 7th July, 1876, asked for sealed tenders up to noon of the 24th of that month for the supply of from 100 to 300 tons of railway spikes, specifications and other information being offered to applicants.

On the 25th July, the tenders which had been received in due time, were opened in presence of the Deputy Minister and the Secretary of the Department. They were five in number, ranging from \$57 per ton upwards. The lowest was made by Messrs. Cooper, Fairman & Co. Their offer at \$57 per ton of 2,240 lbs. was formally accepted on the 28th July, 1876, without giving them any undue advantage.

The agreement has been fulfilled, and the following amount paid on account of it :—

30th June, 1877.....\$8,532.90.

CONTRACT No. 30.

Bolts and Nuts.

There was no formal contract in this case, the agreement being contained in correspondence as hereinafter mentioned.

At the competition for rails and accessories, in the fall of 1874, the Mersey Steel & Iron Co. had tendered for 10,000 tons of rails and for bolts and nuts to be delivered at Montreal, naming \$101 as the price per ton for bolts and nuts. This tender was signed by Messrs. Cooper, Fairman & Co. as agents for the said tenderers. Messrs. Cooper, Fairman & Co. had, at the same time, tendered in their own name for 10,000 tons of rails, and for bolts and nuts to be delivered at Duluth or Thunder Bay, and naming \$107 as the price per ton for such bolts and nuts.

The Department treated these two offers as made on behalf of the Mersey Co., and notified Messrs, Cooper, Fairman & Co. of their acceptance, sending, at the same time, contracts to be executed by the Mersey Co. for 20,000 tons of rails and proportionate quantity of bolts and nuts. This contract the Mersey Co. declined to execute except for rails alone, and those to be delivered at Montreal. It was closed on that basis. The Department

was notified, as shown in our report on contract No. 8, of the refusal of the Mersey Co. to carry out any offer made by Messrs. Cooper, Fairman & Co., except that for rails alone and their delivery at Montreal.

Mr. Fairman testified that he had not been authorized by the Mersey Co. to include in their tender an offer for bolts and nuts.

The notice to the Department that the Mersey Co. declined to carry out the offer for bolts and nuts, was conveyed in the following letter :—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—In the contract for steel rails, &c., with the Mersey Steel and Iron Company, they make strong objections against having bolts and nuts included in their contract, and they were accordingly left out. The price was to have been (\$101) one hundred and one dollars per gross ton, delivered in bond at Montreal.

“We, as agents for Messrs Robb & Co., of the Toronto Bolt and Nut Works, beg to supply the Laird bolts and nuts as per sample bolt, to be furnished by the Inspector, Mr. C. P. Sandberg, of London, the price to be (\$101) one hundred and one dollars per gross ton, duty paid, delivered in Montreal or Toronto.

“We are, dear Sir,

“Yours, &c.,

“COOPER, FAIRMAN & Co.,

“Agents for ROBB & Co.

“The Minister of Public Works,

“Ottawa.”

The original offer in November, 1874, was treated as made for the Mersey Co., the principals of Messrs. Cooper, Fairman & Co. On those principals declining it, this new offer was made plainly on behalf of other persons, and there is no reason, apparent from the evidence, why the contract should be given to the parties named by Messrs. Cooper, Fairman & Co., without learning whether others would supply the articles at a lower price. Other proposals for bolts and nuts at prices less than \$101 had been made to the Department before this letter. Some were in connection with tenders for rails, some not.

Messrs. Darling & Co., had, on the 16th November, 1874, opened a correspondence with the Department, concerning bolts and nuts, irrespective of rails, which is set out below :—

“30, ST. SULPICE STREET,

“MONTREAL, 16th November, 1874.

“SIR,—In reference to the tenders for rails and fastenings asked for in your circular of the 3rd ult., we regret to say, as regards rails, a reply has not reached us, although we have reason to suppose has been despatched, and we look for a communication by telegraph on the subject from hour to hour.

"As to fish-bolts and nuts, we are prepared to supply them, delivered on the wharf here, at £19 sterling per ton of 2,240 pounds, no charge for packages, with the understanding that we pay no duty upon the goods, and that the Government assume all the risk that cannot be covered by the ordinary policy of insurance. Payment to be made in accordance with terms mentioned in your circular.

"Immediately on receipt of reply regarding rails, we shall take the liberty of communicating with you on the subject.

"We are yours faithfully,

"WM. DARLING & CO.

"F. BRAUN, Esq.,

"Secretary Public Works Department, Ottawa."

"In explanation of the risk above referred to, of which we desire to be held free, we may say, that under the ordinary policy of insurance, damage by sea-water, where the ship is not burnt nor stranded, is at the owner's risk. Such risk may be insured against by a policy covering 'all risks,' that is not usual, and would involve an additional expense of about 2 per cent. If it be desired to have the goods insured 'all risks,' we would undertake to do so, charging the difference in the premium, as compared with the premium, free of particular average. This would make the price about £19 7s. 6d. per ton."

"MONTREAL TELEGRAPH COMPANY,

"OTTAWA, 18th November, 1874.

"By Telegraph from Montreal, to T. Trudeau, Deputy Minister Public Works.

"Will supply one hundred tons; if more wanted please inform us; we are not restricted to quantity.

"WM. DARLING & CO."

"MONTREAL, 18th November, 1874.

"DEAR SIR,—In reply to your telegram of yesterday, we telegraphed this morning: 'Will supply one hundred tons; if more wanted please inform us; we are not restricted to quantity.' Should a large quantity be required, we will be pleased to have an opportunity to ask our correspondents how much they can undertake to furnish during the season of 1875.

"We are, yours very respectfully,

"WM. DARLING & CO.

"T. TRUDEAU, Esq.,

"Deputy Minister Public Works, Ottawa."

"OTTAWA, 2nd December, 1874.

"GENTLEMEN,—Referring to your letter and telegraphic message, both dated the 18th ultimo, offering to furnish 100 tons of railway bolts and nuts, I beg to inform you that the parties who have contracted to supply the steel rails will also furnish the bolts and nuts required for the quantity of rails contracted for.

"I have, &c.,

"F. BRAUN,

"Secretary.

"WM. DARLING & Co., Montreal."

Messrs. S. Waddell & Co., on the 12th December, 1874, addressed the Department with a view of quoting prices for bolts and nuts, irrespective of rails. Their letter and reply are set out below:—

"27, ST. JOHN STREET,

"MONTREAL, 12th December, 1874.

"DEAR SIR,—We learn you are making enquiries about fish-plates, bolts and nuts, and would be glad if you will kindly allow us an opportunity to quote for same for delivery in 1875, either in Montreal or Toronto, or both points.

"Will you be kind enough to return sample of Cammell's rails sent you by us.

"Yours truly,

"S. WADDELL & Co.,

"Per A. S. HALDEN.

"F. BRAUN, Esq.,

"Secretary Department of Public Works,

"Ottawa."

"OTTAWA, 21st December, 1874.

"GENTLEMEN,—With reference to your letter of the 12th inst., offering to supply fish plates, bolts and nuts, I am to state that the quantity required has already been contracted for by the Government.

"The sample of "Cammell's Rail," transmitted by you has been returned by express.

"I have &c.,

"F. BRAUN,

Secretary.

"MESSRS. S. WADDELL & Co.,

"Montreal."

In the November competition the following offers had been made for bolts and nuts in connection with tenders for rails:—

Guest & Co.....	\$93 29
Rice, Lewis & Son.....	99 00
T. F. Allis.....	94 50
James Watson & Co.....	92 47
A. G. Godeffroy.....	82 37
Wm. Darling & Co.....	92 47

The Deputy Minister testified that after the notice that the Mersey Co, had excluded the bolts and nuts from their contract, no effort was made by the Department to ascertain if these articles could be obtained at prices lower than proposed by Messrs. Cooper, Fairman & Co. The offer of that firm was accepted by the following telegram:—

"OTTAWA, 5th March, 1875.

"Telegram to Cooper, Fairman & Co., Montreal.

"Your tender on behalf of Robb & Co., Toronto, for supply of bolts and nuts at \$101 (one hundred and one dollars) per ton is accepted.

"F. BRAUN,

"Secretary."

On the cover attached to the offer of Messrs. Cooper, Fairman & Co., are these words:—

“Recommended, S. F.,” and “Approved March 5th, 1875, T. T.”

The latter initials being those of the Deputy Minister, and the former those of the Chief Engineer.

Mr. Fleming stated, in evidence, that he knew nothing of the transaction; that he had written the word “recommended” above mentioned; that it was likely he did not give it much attention; that this paper was disposed of amongst hundreds of others referred to him in that manner in the usual routine. He added, however, that he probably looked into it at the time and thought it a proper thing to do, though from the appearance of the paper he would say that his attention was not specially called to the fact that there was any intention of entering into a contract.

Mr. Reynolds, who lives in London, England, and is acquainted with the fluctuations of the market of iron materials connected with railways, testified that the tendency of that market was downwards in the fall of 1874 and beginning of 1875, falling away gradually and steadily; that the fluctuations would apply to bolts and nuts as well as to rails, so that in March, 1875, the market for them would be weaker, about £2 sterling less than in November previous.

Mr. Fairman, speaking of the tendency of the market from November, 1874, forwards, testified that he thought the market dropped after three months or so.

The evidence, therefore, shows that in November, 1874, several offers for the supply of bolts and nuts were made lower than \$101, and that persons acquainted with the market believed that from that time forward prices did not rise, but if there were material fluctuations they were downwards. Inasmuch as no competition was, invited we have no positive knowledge of the price at which the Department could have procured the articles covered by this contract at the time it was made.

Upon the whole the evidence shows that the offer was received by the Department and passed through the hands of Mr. Fleming to the Deputy Minister, who decided to accept it, without either of these officials considering it necessary to investigate the merits of the offer, or to learn whether the articles could be procured at a lower rate.

We think that there was at the time strong reason for believing that the bolts and nuts contracted for in this case could have been obtained at a cost less than that which was promised, without competition, to Messrs. Cooper, Fairman & Co.

The contract has been fulfilled, and the sum of \$16,160 paid upon it before the 30th June, 1876.

CONTRACT No. 31.

Bolts and Nuts.

There is no formal contract in this case; the agreement is contained in the correspondence hereinafter set out, and was arrived at without competition.

On the 21st January, 1875, the Department of Public Works, by a formal letter from the Secretary, accepted the offer of Messrs. Cooper, Fairman & Co. for 5,000 tons of rails to be delivered at Liverpool, and which were intended by the Government to be shipped thence to Vancouver Island. No arrangement had been made concerning the supply of bolts and nuts for these rails, up to 2nd March, 1875, when the following proposal was made :—

“MONTREAL, 2nd March, 1875.

“DEAR SIR,—We beg to quote for bolts and nuts for the 5,000 tons rails for Vancouver Island, to be supplied by us to Sandberg's section, at (£19 10s.) nineteen pounds ten shillings per gross ton, f. o. b., Liverpool, the said bolts to stand Sandberg's test, and to be paid for by the Financial Agents of the Canadian Government in London, upon presentation of invoice bills of lading and inspection certificate; deliveries to be made in March, April and May of this year.

“We are, dear Sir,

“Yours truly,

“THE PATENT BOLT AND NUT CO.,

“Per FAIRMAN & Co.,

“Agents.

“F. BRAUN, Esq,

“Secretary Department of Public Works,

“Ottawa.”

This passed through the same process as the offer of the same date, made by the same firm, on which contract No. 30 was based. It was referred on 4th March to the Chief Engineer, who endorsed it “Recommended, S. Fleming, 4th March,” after which the Deputy Minister endorsed it “Approved, 5th March, 1875, T. T.,” and it was accepted accordingly by the following telegram :—

" OTTAWA, 5th March, 1875.

" *Telegram to Cooper, Fairman & Co., Montreal.*

"Your tender for bolts and nuts for rails to Vancouver Island at £19 10s. sterling, (nineteen pounds ten shillings) per ton, is accepted.

" F. BRAUN,
" *Secretary.*"

This was equal to \$94.90 at Liverpool, or \$99.76 at Montreal. Neither Mr. Fleming nor Mr. Trudeau gives any reason for the transaction or explains why no competition was invited. In the case of contract No. 30, Messrs. Cooper, Fairman & Co., in making their offer, called attention to the fact that \$101 had been promised to the Mersey Co. This had been done in connection with a tender sent in for that company by Messrs. Cooper, Fairman & Co. as their agents; and that circumstance may have been relied upon as sufficient to induce the Department to waive the test of competition, though the refusal of the Mersey Co. to conclude any bargain except concerning their own manufactures, namely, rails, had freed the Department from any liability to these Montreal agents. In this case there was no such circumstance, nor any other which could be a reason for entertaining the offer otherwise than on its own merits.

As pointed out in our report in contract No. 30, there was on the 5th March, 1875, the date of accepting this offer, recorded in the Department the following facts: Messrs. Darling & Co. had offered, in November, 1874, irrespective of rails, to deliver bolts and nuts at Montreal at £19 stg.=\$92.34 per ton. Messrs. S. Waddell & Co. had endeavoured to make offers irrespective of rails, and were informed on 21st December, 1874: "That the quantity required had already been contracted for."

Offers had been made in the tenders for rails to deliver bolts and nuts at Montreal, as follows:—

Guest & Co.....	\$93 29
Rice, Lewis & Sons.....	99 00
T. V. Allis.....	94 50
Jas. Watson & Co.....	92 47
A. G. Goodefroy.....	82 37
Wm. Darling & Son.....	92 47

The price of transportation from England to Montreal was shown to be 1 stg. or \$4.86 per ton, thus leaving the price at Liverpool \$4.86 lower than the respective prices above named for delivery at Montreal.

There had been, in fact, no rise in the market between November, 1874, and the acceptance of this offer. The price at which bolts and nuts were to be had does not seem to have been considered. The evidence leads us to find that at the time of accepting this offer, facts were recorded in the Department which showed good reasons for believing that the articles covered by this contract could then have been procured at a lower price than was here promised. As there is, however, no such positive means of information as would be afforded had there been a competition, we can only look to the evidence of the general state of the market in March, 1875, as compared with that in November, 1874.

The testimony of Mr. Reynolds and Mr. Fairman, referred to in our report on contract No. 30, leads us to believe that at the time of accepting the offer in this case, the articles referred to could have been purchased at Liverpool at a price less than that paid without competition under this contract.

The contract was fulfilled.

The amount paid on it to the 30th June, 1875, \$6,800.69.

CONTRACT No. 32.

Railway Spikes.

By this contract, dated 12th May, 1877, James Cooper and Frederick Fairman, under the name of Cooper, Fairman & Co., bound themselves to supply 250 tons of railway spikes, in accordance with specifications attached to the said contract, at the rate of \$54.95 per ton of 2,240 lbs.

On the 31st January, 1877, the Chief Engineer, in a communication to the Secretary of the Public Works Department, reported that there would be required, on the opening of navigation, at Fort William 75 tons of spikes, and at Selkirk, 175 tons.

On the 19th February, 1877, the Department issued an advertisement asking for tenders for the supply of from 100 to 300 tons of railway spikes up to noon of the 13th March following, and stating that specifications and other information could be had on application. On the 15th March, seven tenders, which had been received in due time, were opened in presence of the Secretary and Mr. Smellie. A schedule was made at the time of opening and it shows that the prices in the offers sent in varied from \$54.95 up to \$75 per ton. The lowest was made by Messrs. Cooper, Fairman & Co., and is the basis of this contract.

The acceptance of the tender of this firm was notified to them by the Secretary of the Department on the 26th March, 1877. A correspondence between Messrs. Cooper, Fairman & Co. and the Department ensued concerning the packages in which the spikes were to be forwarded, they desiring to vary the terms of the specifications by using kegs which would contain two hundred weight, instead of those mentioned in the specification, which were to contain no more than one hundred weight.

We do not consider it necessary to set out this correspondence. It resulted in the spikes being forwarded in the packages as originally described with the exception of a small proportion which were packed in kegs of the larger size, under the approval of Mr. Smellie, who inspected them on behalf of the Engineering Department.

The contract, made without giving any undue advantage to the contractors, was fulfilled, and the following sums were paid on it:—

To 30th rd June, 1877.....	\$13,645 50
“ 1878.....	90 00
Total	\$13,737 50

CONTRACT No. 32A.

Engineer's House.

By this contract, dated the 10th January, 1877, Edward F. Lemay and William Blair agreed to erect and finish, according to specifications, one round-house and platform, at each of the following places:—

Buda,
 Nordland,
 Linkoping,
 Port Savanne,
 Upsala,
 Carlstadt,
 Bridge River and
 English River,

at the respective times mentioned in the said agreement, receiving the prices mentioned therein, and which varied according as the building should be of logs or of balloon frames, and also varying in price at the different places.

This contract, for the building of eight houses, was entered into by Mr. Hazlewood, Resident Engineer, at Prince Arthur's Landing, acting

on behalf of the Government. It was not altogether fulfilled, having been withdrawn on the recommendation of Mr. Marcus Smith, after four houses had been built, and after some materials had been collected for others.

In addition to the letter of the 13th May, 1875, from the Chief Engineer to Mr. Hazlewood, of which an extract is given in our report upon contract No. 24, he wrote the following on 6th May, 1875 :—

“ CANADIAN PACIFIC RAILWAY,

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, May 6th, 1875.

“ MY DEAR SIR,—With regard to the erection of engineers' houses, on the line of the Pacific Railway, the Department authorizes the erection of the structures required under a contract which the Engineer in charge will make, taking care to have the agreement on the most favourable terms possible to the Government, and to forward a copy of the contract in each case to the head office.

“ Yours truly,

“ SANDFORD FLEMING.

“ SAMUEL HAZLEWOOD, Esq.,

“ Ottawa.”

On the 15th November, 1876, Mr. Marcus Smith, acting Engineer-in-Chief, wrote the following letter to Mr. Hazlewood :—

“ OTTAWA, 15th November, 1875.

“ DEAR SIR,—Your statement of the 18th October, in regard to payments made by Mr. Bethune for trifling works that would be chargeable under the head of ‘construction,’ has been laid before the Department, and I enclose herewith a copy of the reply from the Secretary (F. Braun, Esq.)

“ You will understand that the Minister has strong objections to any work being done, except by contract, for which tenders have been invited by advertisements in the newspapers. And I would suggest, for your consideration, whether there is enough slashing now to be done to make it advisable to call for tenders. For other trifling jobs, you will, of course, use the the discretionary power given you by the Secretary's letter above referred to.

“ Yours truly,

“ MARCUS SMITH.

“ S. HAZLEWOOD, Esq.,

“ Prince Arthur's Landing.”

On the 23th November, 1876, Mr. Hazlewood issued advertisements at Prince Arthur's Landing, asking for tenders up to noon of the 8th January, 1877, for the erection of eight engineers' houses, including wood-sheds, platforms, &c., along the line of railway at the following points :—

Buda, 39½ miles west of town plot.

Nordland, 50½ do

Linkoping, 60 do

Port Savanne, 71 miles west of town plot.

Upsala, 80½ do

Carlstadt, 89, do

Bridge River, 98½ do

English River, 112 do

And stating that plans and other information could be obtained at his office.

On December 18th, 1876, Mr. A. Bethune, who was paymaster at Prince Arthur's Landing, forwarded a copy of this advertisement to the Secretary of the Department, and asked to be instructed as to whether the houses were to be paid for through him. This was brought to the notice of the acting Engineer-in-Chief, who wrote the following to Mr. Hazlewood letter:—

“OTTAWA, 28th December, 1876.

“DEAR SIR,—I have received by mail a printed hand-bill calling for tenders on Monday, January 8th, 1877, for the erection of eight engineers' houses, wood-sheds, platforms, &c., on the line of the Canadian Pacific Railway, between Fort William and English River, purporting to be issued by your authority as District Engineer, and dated November 28th, 1876.

“I am not informed by what authority you have called for these tenders, and the Deputy Minister of Public Works requests me to call your attention to the letter of the Secretary, dated November 14th, 1876. A copy of which was enclosed for you in my letter dated November 15th, 1876. The Secretary therein distinctly states that:—‘It is desirable that works of construction in connection with the railway be approved by the Department before expenditure is incurred.’

“In compliance with these instructions, I have to request that you will forward by mail to this office all the tenders you may receive on or before the 8th January, 1877, for the construction of the works mentioned in the hand-bill, together with copies of the plans, sections, specifications, &c., relating to the same, to be submitted to the Department before any contracts are made.

“Yours truly,

“MARCUS SMITH.

“Acting Engineer-in-Chief.

“SAM. HAZLEWOOD, Esq.,

“Prince Arthur's District.”

The letter of Mr. Bethune, above alluded to, was referred to Mr. Fleming, the Chief Engineer, who reported it as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, February 10th, 1877.

“SIR,—In reply to your letter dated the 5th inst., enclosing a communication from Mr. Angus Bethune of date 18th, December, relative to construction of houses for engineers along the line of the Canadian Pacific Railway.

"I beg to say that the District Engineer, Mr. Hazlewood, has been directed not to enter into any engagements of that kind without first regularly getting the approval of the Department, and that the tenders to be received by Mr. Hazlewood on the 8th January, are directed to be forwarded by mail to this office in the first place, when, if considered advisable, they will be brought before the Department.

"I am, etc., etc.,

"SANDFORD FLEMING.

"F. BRAUN, Esq.,

"Secretary Public Works."

In the meantime Mr. Hazlewood had received the tenders at Prince Arthur's Landing on the day named in the advertisement, and had assumed the responsibility of entering into the contract above-mentioned, which was based upon the lowest of these tenders.

There were nine offers in which the aggregate of the prices for the eight houses varied from \$23,409 to \$29,920. In the following June Mr. Marcus Smith went over the line on which these houses were being erected and he wrote the following letter to Mr. Smellie, of the Engineering Department at Ottawa :—

"PRINCE ARTHUR'S LANDING, June 11th, 1877.

"MY DEAR SIR,—Herewith I enclose a certificate in duplicate of Mr. Hazlewood, the engineer in charge of this district for \$7106.75 for work done in the erection of four engineers' houses on the line of the Canadian Pacific Railway, under the contract with Messrs. Lemay & Blair, dated the 10th day of January, 1877, of which you will find a copy in my desk in the pigeon hole, headed 'Prince Arthur District,' or it may be amongst Mr. Fleming's papers. Also, a bill of extras for piling, foundation and other work not comprised in the contract, amounting to \$616.50. Mr. Hazlewood let this contract on the authority of a letter from Mr. Fleming, dated May 6th, 1875, a copy of which I herewith enclose with a list of the tenders he received in response to an advertisement by hand bills or posters, a copy of which you will also find in my desk. Mr. Hazlewood states that the houses and shanties had previously been erected on the same authority, but on the 15th November, 1876, I wrote to Mr. Hazlewood enclosing him a copy of the letter of the Secretary, Mr. Braun, to Mr. Bethune, dated Nov. 14, 1876, a copy of which is herewith enclosed. In December, I received a copy of the hand bills calling for tenders, and immediately on the 28th wrote to Mr. Hazlewood again calling attention to the Secretary's letter of the 14th of November, and requested him to send down to the Department of Public Works all the tenders he might receive with a copy of the plans and specifications for the erection of these houses. He states that these letters having been written after the close of navigation on the lakes, he did not receive any of them till after he had awarded the contract which he did to the firm who sent in the lowest tender and that they have so far done their work satisfactorily. The houses embraced in the contract are at the following stations :—

" 'Buda,' 39½ miles from Fort William; 'Nordland,' 50½ miles from Fort William; 'Linköping,' 60 miles from Fort William; 'Port Savanne,' 70 miles from Fort William; 'Upsala,' 80½ miles from Fort William; 'Carlstadt,' 89½ miles from Fort William; 'Bridge River,' 98½ miles from Fort William; 'English River,' 112 miles from Fort William.

"It is for work done on the houses at the four first stations that the enclosed certificate is given and they are so far advanced that I think it best the contractors should complete them without delay. But the erection of the last four houses west of Port Savanne is not commenced, though there is a large quantity of material delivered on the ground including a variety of manufactured articles, such as doors, sashes, locks, hinges, nails, &c. These are principally delivered at Carlstadt.

"That which was delivered at Upsala has been burned by bush fires, and the house that was completed at Buda has been destroyed by the same course. I am more than doubtful if it would be good policy or economy to erect these houses so long before the line will be opened for public traffic. It was thought that by erecting these at once, it would save the expense of building huts for the accommodation of the engineering staff during construction. But we see that they are liable to be destroyed by fire, that they will only be occupied for a year or so during the construction of the line, and will be vacated as the engineers move on with the work, then comes the expense of some one to take care of them and it would probably be found, even after the line was opened for traffic that some of these houses would not be required for years as station houses, for in the rough country between Savanne and Rat Portage there is very little land fit for settlement.

"I think it would be better to confine the erection of houses during the construction of the railway to a few central points convenient for transportation of supplies, &c., such as Savanne, English River, Rat Portage, &c., and construct huts for the engineers where required, these should not cost more than \$500 to \$700 at each station, and will be of some use as stables or storehouses after the line is completed. I think this cost would be less than that of maintaining and watching houses after being vacated by the engineers and altering them to be suitable as station houses. If the department approves this view of the case, then I think the erection of the last four houses in the west of Savanne should be stopped at present and the contractors paid for material delivered. Except probably that at English River which will be a main station and an engine house will be required there. Please bring this subject before the Minister and instruct Mr. Hazlewood.

"I am, Sir,

"Yours truly,

"MARCUS SMITH.

"W. B. SMELLIE, Esq."

In consequence of this recommendation the work under this contract was not further proceeded with. Mr. Marcus Smith was charged with the final settlement with the contractors, in which a considerable amount was paid beyond the price of the four houses which had been erected. The items were as follows ;—

Cost of four houses and platforms.....	\$11,299 50
Materials burnt at Upsala and Carlstadt.....	1,393 62
Materials delivered.....	4,221 54
Provisions and camp equipage.....	393 82
Labour upon Upsala station	400 97
Watching fires at Nordland.....	21 00
<hr/>	
Total.....	\$17,730 45

It will be noticed that materials destroyed by fire were paid for. This was because the fires were the consequence of the operations in the building of the railway. One of the houses which had been erected at Buda, as well as the material above mentioned as having been destroyed, was burnt before the contract was stopped.

Upon the evidence we conclude that in making this contract Mr. Hazlewood exceeded the authority which the Department intended to leave in his hands at that time ; that the directions of the 6th May, 1875, above mentioned, were, to some extent, qualified by Mr. Marcus Smith's letter of the 15th November, 1876, and were expected to be altogether withdrawn by his letter of 28th December, 1876 ; that the latter having failed to reach Mr. Hazlewood before the date of the contract, and without any fault of his, he was not to blame in assuming that under the circumstances the execution of the contract was still within his jurisdiction.

We find that the contractor got no undue advantage in the agreement, and that the Department, at the time of the contract, could not have obtained the work provided for at a cost less than that mentioned in the agreement.

The amount paid was, as above mentioned, \$17,730.45.

CONTRACT NO. 33.

Railway Construction.

By this contract, dated the 21st June, 1878, Timothy Kavanagh, James Murphy and Joseph Upper, covenanted to provide and complete at the times stated therein the excavation, grading, bridging, track-laying, ballasting and other work necessary to complete the Pembina Branch between St. Boniface station and the International Boundary, at the respective prices specified in the contract for the several classes of work.

At the time of executing this contract, Mr. Kavanagh was not interested in its consequences, having joined as a contractor as a matter of form, and lending his name upon the understanding between him and the other contractors that they should carry it on for their own benefit. The reason for this is hereinafter stated.

Under Contract No. 5, Mr. Joseph Whitehead had done earth-work for a road-bed over most of the distance between St. Boniface and Emerson, leaving openings at the streams. This Contract No. 33, was intended to include the road-bed from a mile south of St. Boniface to the point where Mr. Whitehead's grading had ended, and "the putting of Mr. Whitehead's grading over the rest of the line into proper shape" to complete the road, together with all the bridges, culverts, cattle guards, crossings, &c.

On the 7th Febrnary, 1878, the Government issued an advertisement asking for tenders up to noon of the 1st March, following, for the works to be done, naming the distance at 63 miles, and stating that plans, specifications, &c., could be had on application.

Fifteen tenders were received in due time, and opened on the 2nd March, 1878, in presence of the Deputy Minister and Mr. Marcus Smith, engineer. The offers varied from \$232,202, made by the above mentioned Timothy Kavanagh, to \$393,885, made by Messrs. Robinson & Robertson. The tenders included an item of 165,000 ties, which were, however, omitted from the contract in consequence of other arrangements concerning them having been made by the Government.

Mr. Kavanagh's offer for ties was at 27 cents each, equal to \$44,550. His offer for ties being the lowest; the deduction did not change his rank in the competition. The contract was awarded to him. He made his tender intending it to be on behalf of himself and a Mr. Falardeau. The Minister of Public Works objected to Mr. Falardeau being joined in the arrangement, whereupon Mr. Kavanagh, not being willing to take the contract alone, told Mr. Murphy, one of the present contractors, the state of affairs, and mentioned the prices at which he had proposed to do the work. Mr. Murphy expressed a willingness to take the contract at Mr. Kavanagh's figures, and Mr. Kavanagh assented. It was then understood that Mr. Kavanagh was to be named in the contract as well as Messrs. Murphy & Upper, but he had virtually abandoned all interest in it and left the management of it to them.

Messrs. Murphy & Upper had, on their own account, tendered in the competition above mentioned, their offer being \$333,536 for the whole work, or, deducting the item of ties, their offer was \$262,586, which is \$74,934 higher than the price at which they assumed it, in place of Mr. Kavanagh.

Before the advertisement in this case, tenders for 165,000 ties had been, on the 4th February, 1878, received at Winnipeg by Mr. Nixon, the purveyor (See report on contract No. 36). That quantity was intended to be used under this contract, and the arrangement made by Mr. Nixon led to the withdrawal of the item of ties from the agreement in this case, as above mentioned.

Upon the evidence we find that in obtaining this contract the contractors got no undue advantage, and at the time of awarding it, the work could not have been provided for by the Department at a cost less than that provided by the agreement.

The contractors did not proceed with the work according to the terms of their agreement, and the Government being dissatisfied with the conduct of it by the contractors, took the work out of their hands.

At the date of our commission, several bridges, road-crossings, some ballasting and a portion of the fencing had yet to be done in order to complete the work undertaken by Messrs. Kavanagh, Murphy & Upper. This was then being carried on by day's labour under the direction of Mr. Rowan, the District Engineer at Winnipeg.

Up to the 30th June, 1880, the following amounts had been paid on it:—

30th June, 1879.....	\$62,500
30th June, 1880.....	29,000
<hr/>	
Total.....	\$91,500

CONTRACT NO. 34.

Transportation of Rails.

The expenditure under two distinct agreements has been charged in the books of the Department as if there were but one, and that bearing this number.

The first was a written contract dated 29th May, 1878, by which the North Western Transportation Co. covenanted to transport in the manner

and at the times therein mentioned, from Kingston to St. Boniface, about 5,000 tons of rails and their accessories, unloading, piling, delivering and insuring the same, and paying all tolls and harbour dues on the route, at \$18 per ton of 2,240 pounds.

The second agreement was contained in a correspondence closed by a letter from Mr. Braun, the Secretary of the Department, to Mr. Henry Beatty, on the 30th September, 1878, to transport 1,000 tons, more or less, from Fort William to Emerson, at \$18 per ton, the same price as paid under the first mentioned contract from Kingston to St. Boniface. We report on each of these agreements in the order of dates.

Owing to a report of Mr. Marcus Smith, Acting Engineer-in-Chief, dated 15th February, 1878, that it would be necessary to forward to Manitoba, 4500 tons of rails, the quantity then lying at Kingston, advertisements were issued, dated the 2nd March, 1878, for the transportation of about 5,000 tons of rails from Kingston to St. Boniface. On the day named for that purpose, four tenders had been received. They were opened on the day following in presence of Mr. Trudeau, Deputy Minister, and Mr. Braun. The schedule then prepared shows that the tenders varied from \$18 to \$22.95 per ton. The lowest was made by the North-West Transportation Co., and was accepted by a letter from Mr. Braun to Mr. Sylvester Neelon, the President of the said Company, dated the 15th May, 1878.

A formal contract on this basis was closed without any undue advantage to the contractor. It has been fulfilled. The amounts paid under it are stated hereinafter, in conjunction with those paid under the subsequent agreement before alluded to.

In Mr. Marcus Smith's report of the 15th February, above mentioned, he stated the probability of 1,500 tons of rails, then at Fort William, being required in 1879 in Manitoba, in addition to the 4,500 tons then at Kingston, as follows:—

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 15th February, 1878.

“SIR,—In reply to your letter of the 30th inst., No. 8629, I beg to state that, in order to complete the track-laying on the Pembina Branch, and contract No. 14, and make provision for laying a portion on contract No. 15, say twenty miles, during the coming season, it will be necessary to forward to Manitoba all the rails now lying at Kingston, said to be 4,500 tons.

“To complete the line between Emerson and Keewatin, 6,000 tons in all will have to be transported to Manitoba, but the balance of 1,500 tons, which will have to be taken from the stock at Fort William, may not be required until the spring of 1879. However, to prevent

any chance of the contractor being delayed, it might, I think, be advisable to remove the 1,500 as far as Duluth, where they might remain and be transported by all rail to contract No. 15 when wanted. This precaution will, however, entail a considerable expense for wharfage at Duluth.

"In addition to the above, it will be necessary to transport 200 tons of fish-plates and 40 tons of bolts and nuts.

"I send you, herewith, form of advertisement for transport from Kingston and Fort William to Duluth.

"I have the honour to be, Sir,

"Your obedient servant,

"MARCUS SMITH,

"Acting Engineer-in-Chief.

"F. BRAUN, Esq.,

"Secretary, Public Works."

Mr. Smith here speaks of a form of advertisement for transportation from Kingston and Fort William to Duluth. It seems not to have been then considered advisable to ask for competition from Fort William. The advertisement appeared in the first instance dated the 21st February, and afterwards in an amended form, dated the 2nd March. omitting in both cases any mention of Fort William.

On the 26th September, 1878, Mr. Braun telegraphed Mr. Henry Beatty as follows :—

"What price per ton will you charge for moving say 1,000 tons of rails from Fort William to Emerson?"

Mr. Beatty answered this the next day from Ottawa as follows :—

"OTTAWA, 27th September, 18.8.

"DEAR SIR,—In reply to your telegram of yesterday I beg to say I will transport one thousand tons of rails, more or less, from Fort William to Emerson, for eighteen dollars (\$18) per ton. This rate includes all charges for loading, unloading, piling, wharfage, harbour dues, storage and insurance.

"This rate may seem out of proportion to the price you are paying from Kingston, but if you will consider, a special steamer will have to be sent to do this work and that she will return light from Duluth to Fort William, and also that the usual rates on freight to St. Boniface and Emerson are the same, you will readily see that it will not much more than cover expenses.

"Respectfully yours,

"HENRY BEATTY.

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

On the 30th September, 1878, this offer was accepted by the following letter from the Department :—

" OTTAWA, 30th September, 1878.

" SIR,—I am directed to state that the offer contained in your letter of the 27th inst., to transport railroad iron from Forts William to Emerson at \$.8 (eighteen dollars) per ton, inclusive of loading, storage, insurance, &c., is hereby accepted for the following quantities or thereabout :

	Tons.
6,800 rails, equal.....	1,500
12,800 prs. fish-plates, equal.....	110
Bolts and nuts, equal.....	11

" Delivery will be made by Mr. R. McLennan, engineer, at Fort William.

" I am, Sir,

" Your obedient servant,

" F. BRAUN.

" HENRY BEATTY, Esq.,

" N. W. Transportation Co.,

" Sarnia, Ont."

Mr. Trudeau was examined as a witness on this matter. He knew of no reasons, except those stated in Mr. Beatty's letter, why the same price should be paid for the distance between Fort William and Emerson as under the contract of the 29th May, for the much longer distance between Kingston and St. Boniface. He thought it was probable, but did not know, that the points were discussed between Mr. Fleming, the Chief Engineer, and Mr. Mackenzie, the Minister. There was no record in the Department, and he had no recollection of the circumstances urged by Mr. Beatty, such as the necessity of sending a steamer specially for this work, its returning light, etc. There were no more extra items, such as loading, unloading, tolls, insurance, etc., in this bargain than in the former one, and he said that this agreement was finally made upon the authority of Mr. Mackenzie.

Mr. Fleming testified that he knew nothing about this contract.

Mr. Mackenzie testified that he did not remember any of the circumstances; that the principal price in transporting rails is for loading and unloading, the mere matter of a day's sailing not amounting to much; and he suggested that if \$15 was the price to Duluth, the balance of \$3 to Fort William would not be very high, but he could not say that \$15 was the price between Emerson and Duluth.

Mr. Campbell, who had had an active experience in the management and freighting of vessels for twenty years, thought there was no scarcity of vessels in September or October, 1878. He gave evidence at some length concerning the freight at different points on the western lakes. The tenor

of his statement was that the extra labour of loading and unloading beyond what could be done by a vessel's own men and machinery, would be worth under 20 cents per ton, and that \$3 between Fort William and Duluth was, under the circumstances of this last agreement, a very high price.

We have no positive evidence from witnesses on the cost of transport in 1878, between Fort William and Emerson, nor between Duluth and Emerson; neither have we the advantage of knowing what price competition would have indicated. Messrs. Fuller & Milne had offered to transport (contract No. 18) at \$13.50, American currency, from Duluth to Winnipeg, when American currency was subject to a discount of about $13\frac{1}{2}$ per cent.; and these contractors in May, 1878 tendered and contracted at \$18, from Kingston to Winnipeg.

We cannot understand, and there is no explanation given, why competition was not invited. It occurs to us that if Mr. Beatty was willing to name as low a price as could be done in competition with others he would have done so without coming to Ottawa to answer the Secretary's telegram.

From the evidence concerning this and other contracts on the subject of transportation we are led to the conclusion that the work provided for by this last agreement of September, 1878, could have been secured by the Department at a lower price than was paid for it, and that in getting the price named, the contractors obtained an undue advantage.

The contract was fulfilled. The amounts paid upon the two agreements were,—

To 30th June, 1879.....	\$60,600
“ 1880.....	49,800 44
Total.....	<u>\$110,400 44</u>

CONTRACT NO. 35.

Railway Spikes.

By this contract, dated the 3rd June, 1878, James Cooper and Frederick Fairman, under the name of Cooper, Fairman & Co., bind themselves to supply, in accordance with specifications and conditions thereto annexed, 480 tons of railway spikes, at the price of \$49.75 per ton of 2,240 lbs., to be delivered part at Fort William and part at Duluth.

On the 21st February, 1878, the Department issued an advertisement inviting tenders for railway spikes up to noon of the 19th March following. The specifications stated the quantity to be 480 tons.

On the 22nd March, 1878, sixteen tenders which had been received in due time were opened in the presence of Mr. Trudeau, the Deputy Minister, and Mr. Braun, the Secretary of the Department. The offers varied from \$49.75 to \$63.45. The lowest tender was made by Messrs Cooper, Fairman & Co., and was accepted as the basis of the contract on the terms above mentioned.

The evidence shows that the Department awarded this contract on the lowest available offer, and giving no undue advantage to the contractors.

An offer had been made by the Warden of the Kingston Penitentiary, to supply the spikes at a price five per cent. under the lowest tender, if allowed to purchase machinery. That offer was withdrawn, but before entering into this contract a report of the Minister recommending it was approved by an Order in Council dated the 16th May, 1878.

The contract was fulfilled and the following sum paid on it:—

To 30th June, 1879..... \$23,880

CONTRACT NO. 36.

Railway Ties.

By this contract, dated the 22nd February, 1878, William Robinson undertook to supply 165,000 ties according to specifications, at 44 cents each, of which 75,000 were to be delivered at St. Boniface, 60,000 at Rat River and 30,000 at Rosseau River, at the respective times named in the contract.

On the 3rd January, 1878, Mr. Braun, the Secretary of the Department, authorized Mr. Marcus Smith, the acting Chief Engineer, to call for tenders for the supply of ties for the completion of the Pembina Branch. Mr. Nixon, the Purveyor at Winnipeg, was directed to receive tenders there for the whole quantity, such tenders to state prices for the separate places of delivery above mentioned.

On the 22nd February, 1878, the day specified for the receipt, the tenders were opened by Mr. Nixon and a schedule of their contents prepared. A copy of this was forwarded forthwith to the Department at

Ottawa and has been produced before us. It shows that twenty-eight offers had been made, varying in price from 25 cents to 70 cents per tie. Many of the tenders were found to be for less than the full quantity and for less than the quantities required at the separate places.

The following list gives the tenders, including that of the contractors and all lower ones, the others being higher, are not material to this report:—

Name.	St. Boniface.	Rat River.	Rousseau River.
A. F. Martin.....	75,000 at 25 cts.	60,000 at 25 cts.	30,000 at 25 cts.
Chas. Nolin.....	10 000 25 "		
Augustus Nolin.....		10,000 at 25 cts.	
T. W. Quigley.....	75,000 at 29 cts.	60,000 25 "	30,000 at 27 cts.
W. C. Lewis.....		60,000 30 "	
A. Bissonnette & Co.....		60,000 33 "	
McKinnon & McDonald.....	75 000 at 35 cts.		
Alex. McNabb.....		60,000 at 35 cts.	30,000 at 35 cts.
John Nesbitt.....		10,000 39 "	
Joseph Pillow & Co.....		5,000 40 "	
Geo. Taylor.....	75,000 at 49 cts.	60,000 49 "	30,000 at 40 cts.
Wm. Robinson.....	75,000 44 "	60,000 44 "	30,000 40 "

The lowest tender, by A. F. Martin, for the whole quantity required at each point at the rate of 25 cents per tie, was accepted, but was withdrawn. Mr. Nixon put himself in communication with the Department concerning the state of affairs, and was instructed to pass to Charles and Augustin Nolin, who had made offers at the same rate for a portion of what was wanted at St. Boniface and at Rat River, and to give the balance to T. M. Quigley, who had made an offer to supply the whole, some at 25 cents and some at 27 cents each. Mr. Charles Nolin named a day to close the arrangement respecting the quantity to be awarded to him, but failed to appear. Augustin Nolin did not answer. Mr. Quigley declined to enter a contract unless the Government would make advances to him before delivering ties. This condition was communicated to the Department, but

declined by a telegram to Mr. Nixon from Mr. Braun, dated the 10th February, 1878, in which telegram Mr. Nixon was directed to act quickly. After this, each of the following parties was sent for in the order named, and declined to contract :—

W. C. Lewis,
A. Bissonnette & Co,
McKinnon & McDonald, and
Alex. McNabb.

There were some intervening tenders, left between the parties named and William Robinson, but the latter declined to contract if any intermediate offers for portions of the quantity were accepted, and Mr. Nixon closed a bargain with him at 44 cents per tie for the whole quantity. This decision was telegraphed to the Department on the 13th March, 1878, after which the following Order-in-Council was passed :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 22nd March, 1878.

"On a memorandum dated 13th March, 1878, from the Honourable the Minister of Public Works, representing that tenders having been called for for the supply of one hundred and sixty-five thousand railway ties for the Pembina Branch of the Canadian Pacific Railway, twenty-eight tenders were received, the highest being at the rate of seventy-five cents and the lowest twenty-five cents.

"That the tender of Mr. A. F. Martin accepted as being the lowest, was withdrawn by him. That Messrs. Charles and Augustus Nolin, Quigley, Lewis, Bissonnette, McKinnon & McDonald, McNabb, Nesbitt, and Pilon & Co., to whom following the regular sequence of rates, the contract was proffered, have all, for reasons specified, declined to carry out their tenders.

"That the tender of Mr. William Robinson, at the rate of forty-four cents for the whole quantity, is the next lowest, and accordingly recommending that authority be granted for the acceptance of his offer.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified.

"W. A. HIMSWORTH,
"C.P.C.

"To the Honourable

"The Minister of Public Works."

The evidence shows that the contract was awarded upon the lowest available offer and without any undue advantage to the contractor.

The contractor failed to fulfil his contract either as to quantities or as to time of delivery, and the matter was taken out of his hands.

The ties not supplied by him were procured by the Department from other sources, and the cost of them was charged to the contractor.

To the 30th of June, 1880, the following sums had been paid on this contract :—

To 30th June, 1879.....	\$51,006 88
“ 1880.....	18,488 04
Total.....	<u>\$69,494 92</u>

CONTRACT NO. 37.

Railway Construction.

By this contract, dated 2nd August, 1878, John Heney, Alphonse Charlebois and Thomas Flood covenanted to complete the excavation, grading, bridging, track-laying and ballasting of the Georgian Bay Branch, between station O on the location of 1877 on the western side of the South River, near Nippisingang post office, to the head of navigation on French River, about five miles east of Cantin's Bay, in length about fifty miles, to be finished by the 1st July, 1880, according to specifications, receiving therefor the prices respectively named in said contract for the different classes of work to be done under it.

The contract with Mr. Foster, No. 12, concerning the Georgian Bay Branch, having been annulled by Order in Council of the 28th February, 1876, as before mentioned, and the route named in that contract having presented more engineering difficulties than were anticipated, a new survey of the country to be crossed by a railway near Georgian Bay was, in the year 1877, made under the direction of Mr. Marcus Smith, acting Chief Engineer. This led to the adoption of the route named in this contract and described more fully in the special report of the Chief Engineer for 1877, page 17.

On the 20th May, 1878, advertisements were issued inviting, up to noon of the 29th June following, tenders for the work above described. Proposals were to be received in two forms, which, together with other information, might be had on application to the Department. Form A was upon the basis of a subsidy per mile in cash and in land, together with interest at the rate of four per cent. for a stated period upon the amount to be proposed by the tenderer. There were some offers on this basis, but they were not entertained.

Form B was based upon a schedule of estimated quantities of the different classes of work to be performed, for each of which the tenderer

was asked to name his price according to the method generally adopted in letting contracts for this railway.

The tenders were opened on the day appointed for their receipt, and a schedule was prepared and certified upon that occasion by Mr. Braun, Mr. Page and Mr. Smellie, officers of the Department. This shows that on form B twenty-six regular tenders had been received in which the total price asked for the work varied from \$809,813 to \$1,228,448, the lowest of these being made by Messrs. McGreevy & Heney. This one is the foundation of the present contract.

The evidence shows that the contract was without any undue advantage to the contractors awarded on the lowest available offer.

Before the contract was executed, Mr. McGreevy, one of the firm of successful tenderers, asked leave to withdraw, and his partner, Mr. Heney, asked to associate with him Messrs. Charlebois and Flood. This was acceded to, and an Order-in-Council based on the following memorandum confirmed the arrangement :—

“10th August, 1878.

“*Memorandum.*

“The undersigned reports that the lowest tender received for the construction of the Georgian Bay Branch of the Canadian Pacific Railway was from Messrs. Robert McGreevy and John Heney.

“That Mr. McGreevy has afterwards asked leave to withdraw his name from the tender, and Mr. Heney requested that the names of Alphonse Charlebois, of Montreal, and Thomas Flood, of Sandy Hill, N. Y., be put in lieu thereof in the contract.

“As Messrs. Charlebois and Flood have the reputation of being good contractors, the undersigned agreed to this and therefore recommends that approval be given to his according the contract to Messrs. Heney, Charlebois and Flood.

“Respectfully submitted,

“A. MACKENZIE,

“*Minister of Public Works.*”

On the 10th June following, Mr. Fleming submitted to the Minister of his Department the following memorandum :—

“*Memorandum.*

“THE GEORGIAN BAY BRANCH, 10th June, 1879.

“SIR,—At the request of the Hon. the Minister, the undersigned begs to report on the present condition of the Georgian Bay Branch.

“According to returns received, the total value of work executed up to the 1st of the present month is \$11,173. This consists almost wholly of chopping down the standing timber ; no earth or rock excavations, or any other kind of work, except \$45 of grubbing has yet been executed.

"The number of men of all kinds engaged, according to last returns, is 69, but this force appears to have been on the ground only a few days, as the average for the month of May was only 36.

"The average for the previous months was about 30.

"The contract is dated 2nd August, 1878; the date for completion 1st July, 1880, giving 23 months for executing the work, which, according to the tender, is estimated at \$809,813.

"The time which has elapsed between the date of the contract and the 1st June was 10 months, during which period the whole work done amounts to \$11,713, leaving work to the value of \$798,643 yet to be executed in 13 months.

"It is quite obvious from the small amount of work done, and the comparatively very low prices for work remaining to be done, that it will be impossible for the contractors to bring the contract to a satisfactory completion.

"SANDFORD FLEMING.

Before much progress had been made under this contract, the Government adopted the policy of discontinuing the construction of the Georgian Bay Branch, and the following Order-in-Council was passed :—

"Copy of a Report of a Committee of the Honorable the Privy Council, approved by His Excellency the Governor General in Council, on the 25th July, 1879.

"On the report, dated 24th July, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, stating that on the 2nd day of August, 1878, a contract was entered into with Messrs. Heney, Charlebois & Flood for the grading, bridging, track-laying and ballasting of a line of Railway between a point on the west side of South River, near Nipissingan Post Office, and the head of navigation on French River, about five miles east of Cauntin's Bay, the said line being in length about 50 miles.

"That the contract provided that the whole of the works comprised therein should be completed and delivered on or before the first day of July, 1880.

"That the approximate value of the work contracted for amounts to the sum of \$809,813 00, and that the estimated value of the work performed, as shown in the Engineer's returns of the 30th June last, is \$12,260.40.

"The Minister recommends that the contractors be notified that it is not the intention of the Government to proceed further with the work under this contract, and that instructions be given them to stop work.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified,

"J. O. COTE, Assistant Clerk.

"The Hon. Minister of Railways and Canals."

On the 5th August, 1879, Messrs. Ripley, Smith & Co., addressed the Minister of Railways and Canals in a letter, which is published in full at page 3 of a return to the House of Commons, dated the 23rd March, 1880, concerning the stoppage of the works under this contract. In this letter Messrs. Ripley & Smith gave notice in substance that they had acquired the interest of Messrs. Heney, Charlebois & Flood in their contract.

The transfer thus alluded to was not recognized by the Department. Subsequently Messrs. Ripley & Smith founded a claim for compensation against the Government on the stoppage of the works, such demand being partly for damages and outlay actually incurred, and partly for the loss of prospective profits. We do not propose to offer any opinion on the validity of this demand, and it is not necessary further to allude to the position taken by Messrs. Ripley & Smith.

On the 9th August, 1879, the following memorandum was submitted to the Privy Council :—

“ (Memorandum.)

“ OTTAWA, 9th August, 1879.

“ The undersigned begs respectfully to report that an Order in Council on the 25th day of July last, cancelling the contract with Messrs. Heney, Charlebois & Flood, for the construction of that section of the Canadian Pacific Railway known as the Georgian Bay Branch, for the reasons stated in the report of the undersigned, recommending the said contract be cancelled.

“ That since the said 25th day of July, to wit, on the 5th day of August instant, it came to the knowledge of the undersigned that previous to the said 25th day of July, to wit, on the 13th day of June last past, the said contractors, Messrs. Heney, Charlebois & Flood, had without the knowledge or consent of Her Majesty, or the Minister of Railways and Canals acting in that behalf for Her Majesty, assigned and transferred the said contract to Messrs. Smith, Ripley & Co.

“ That the undersigned was not aware, when he recommended the Order in Council of the 25th of July, that such assignment had been made in contravention of the 17th article of the said contract entered into by said contractors with Her Majesty.

“ That on the 5th day of August last, he was notified by letter purporting to be signed by the said Messrs. Smith, Ripley & Co., that such assignment had been made to them, and at the same time a paper purporting to be an assignment of the said contract, duly executed, was deposited in the Department of Railways and Canals.

“ That by the seventeenth section of the contract entered into by the said contractors, it is provided, and is made a condition of the said contract, that no assignment of such contract shall be made without the consent of Her Majesty.

“ Her Majesty may take the work out of the contractors' hands and employ such means as she may see fit to complete the same.

“ That such assignment was never assented to by Her Majesty, or by the Minister of Railways and Canals acting for Her Majesty.

“ The undersigned, for the above reasons, as well as for those set forth in the former report, recommends that, in accordance with the terms of the said contract, the contractors, Messrs. Heney, Charlebois & Flood be notified that the said contract is taken out of their hands and annulled.

“ Respectfully submitted,

“ J. H. POPE,

“ Acting Minister of Railways and Canals.”

This was followed by the Order in Council below set out :—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 14th August, 1879.

"On a Memorandum, dated 9th August, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, having reference to the Order in Council passed on the 25th day of July last, cancelling the contract with Messrs. Heney, Charlebois & Flood, for the construction of that section of the Canadian Pacific Railroad known as the Georgian Bay Branch, and recommending for the reasons stated in said memorandum that the contractors, Messrs. Heney, Charlebois & Flood, be notified that the said contract is taken out of their hands and annulled.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified,

"W. A. HIMSWORTH, C. P. C.

"The Hon. Minister of Railways and Canals."

On the same day the Acting Secretary of the Department wrote to the contractors as follows :—

"OTTAWA, 9th August, 1879.

"GENTLEMEN,—By direction of the Acting Minister of Railways and Canals, I have to inform you that by an Order in Council, dated 25th July last, a copy of which is herewith enclosed, the contract made with you for the construction of that portion of the Canadian Railway, known as the Georgian Bay Branch Railway, was by virtue and in pursuance of the terms of the said Order in Council, cancelled and annulled, and you are hereby notified that the said work is, on behalf of Her Majesty, taken out of your hands, and you will accordingly cease all further operations under or by virtue of said contract.

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. H. ENNIS,

"Acting Secretary.

"MESSRS. HENEY, CHARLEBOIS & FLOOD."

"MONTREAL, 13th August, 1879.

"SIR,—We have to acknowledge yours of the 9th instant (No. 12,191), covering a copy of an Order in Council (No. 19,791), of the 25th July, authorizing you to cancel our contract for the construction of the Georgian Bay Branch of the Canadian Pacific Railway; also your notice of August 9th to us to discontinue operations under said contract.

"In pursuance of your notice, I immediately transmitted your order to discontinue operations to the parties temporarily in charge of the work, by telegraph to Collingwood, the executive office of our firm.

"Should there be a failure of full compliance to your order by the parties temporarily in charge of the work, on account of certain efforts to negotiate with us for the entire control of said work, we would hereby inform and notify you that such negotiations were never completed, or deemed sufficiently likely to become so, to cause us to ask your official sanction

thereto. Therefore, we shall only enumerate, subject to amicable settlement, such charges as have become chargeable previous to the receipt of your notice to discontinue operations.

" We have the honour to be, Sir,

" Your obedient servants,

" HENEY, CHARLEBOIS & FLOOD.

" Hon. JOHN POPE,

" Acting Minister of Railways and Canals."

At the date of our commission neither the original contractors nor their assignees had been finally settled with.

Mr. Fleming, in a report to the Minister, dated 9th February, 1880, stated that the work at that date performed under the contract had been measured up, and the final certificate issued for \$24,807.94.

The expenditure up to the 30th June, 1880, under this contract was as follows :—

To 30th June, 1879.....	\$10,050
" 1880.....	950
<hr/>	
Total.....	\$11,000

CONTRACT No. 38.

Alteration of Building.

By this indenture, dated the 26th July, 1878, Edmund Ingalls, agreed within the time therein stated, to alter and to finish the Government building on lot 34 in the town plot of Fort William, according to specifications and plans annexed to the said contract, receiving therefor \$3,261 at the times mentioned.

The object of this contract was to alter the Neebing Hotel, so as to afford accommodation for officers and a residence for the Purveyor at Fort William.

An advertisement invited tenders to be received up to 4 o'clock p.m., of the 20th July, 1878, which was issued by Mr. McClennan, the engineer in charge at Prince Arthur's Landing, under directions from the Department at Ottawa.

The tenders received in due time were opened on the 26th July, 1878, by Mr. McClennan, and showed seven offers, varying from \$3,201 to \$4,487. The lowest was made by Edmund Ingalls, and was accepted by Mr. McClennan, who forwarded a copy of the advertisement and a schedule of the

tenders to the office of the Engineer-in-Chief at Ottawa. The contract was based upon the lowest tender and without any undue advantage to the contractor.

It was supposed, at the time of letting it, that the amount named would be somewhat reduced by the value of doors, windows and materials to be furnished to the contractor from buildings at Fort William, which were not required and which could not then be rented. The amount, however, was not reduced, but increased in consequence of some extras in the completion of the work.

The amount paid was :—

To 30th June, 1879..... \$3,456 85

CONTRACT No. 39.

Transportation of Rails.

By this contract, dated the 18th July, 1878, John Irving covenanted to convey, on or before the 1st November, 1878, 5,266 imperial tons, being all the rails then at Esquimalt and at Nanaimo, respectively, to Emory's Bar, on the Fraser River, or at a point in the neighbourhood of the toll-gate at Yale, according to specifications, receiving therefor \$6.44 per ton of 2,000 pounds.

This contract was awarded at Victoria, B.C., by Mr. John Robson, Purveyor, under instructions from Mr. Braun, the Secretary of the Department at Ottawa.

On the 12th June, 1878, Mr. Braun telegraphed Mr. Robson to "Advertise for tenders for the removal of steel rails to Yale, * * * * * to be completed by the 1st November next." Two days afterwards, Mr. Robson advertised, inviting tenders up to the 8th July following for the removal and stacking of 3,111 tons then at Nanaimo, and 2,155 tons then at Esquimalt, to be completed before the 1st November, 1878. The character of the vessels to be employed was described, and it was mentioned that the offers were to be made subject to direction afterwards concerning the exact points of delivery.

In answer to questions of the 6th July, 1878, by telegram from Mr. Robson, Mr. Brann on that day telegraphed him as follows:—

"(Telegram.)

"6th July, 1878.

"Rails to be stored at Yale. Open tenders with Cambie, both countersigning. Report amount and standing of three lowest by telegraph and wait for instructions.

"F. BRAUN,

"Secretary.

"JOHN ROBSON,

"Victoria, B.C."

On the 10th July, 1878, Mr. Robson telegraphed Mr. Braun as follows :—

"Three tenders for rails—\$7, \$6.50 and \$6.44 per ton, respectively—all from responsible parties."

On the 12th July, 1878, Mr. Braun answered :—

"Accept lowest tender for transportation of rails."

On the 19th June, 1878, Mr. Robson had addressed a letter to Mr. Braun, enclosing a copy of the advertisement before mentioned, and asking for definite instructions as to the method of dealing with tenders, insurance, &c., and containing the following passage :—

"The time (the 1st November) is, in view of existing facilities, rather limited, and I beg to suggest for the consideration of the Department, whether it might not be desirable to extend the time for delivery of the major portion of the rails till the latter part of next summer, provided that by so doing the freight rate would be materially reduced."

At the time of the first direction from Mr. Braun as above mentioned, it was understood in the Department that Burrard Inlet would be favourably recommended to Council as the Pacific terminus for the railway, and that rails would be, therefore, required at Yale. On the 13th July, 1878, the following Order in Council was passed :—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 13th July, 1878.

"On a Memorandum, dated 11th July, 1878, from the Honourable the Minister of Public Works, reporting that on the 1st June, 1877, an Order in Council was passed in accordance with the provisions of the Canadian Pacific Railway Act, 1874, defining the route of the railway between Fort William, on the Kaministiquia River, and Jasper House and Tête Jaune Cache ;

"That the same Order in Council also defined the route from the last-named point to the Pacific Ocean, in the event of the Bute Inlet or Dean Inlet routes being ultimately adopted, these being the routes through British Columbia, one of which, at that time it seemed probable would be adopted ;

"That later information has shown that it would be in the public interest that the route of the railway from the neighbourhood of the Tête Jaune Cache should be towards Burrard Inlet ;

"The Minister, therefore, recommends that the route of the railroad shall be defined generally as passing from the neighbourhood of the Tête Jaune Cache by the Albreda River, to the North Thompson River, and descending the valley of the said North Thompson River, towards Kamloops Lake, to the Fraser Valley at Lytton, and thence descending the valley of the Fraser by Yale and New Westminster to Port Moody, or such other point on or near Burrard Inlet, as may be found most convenient for the purpose of harbour accommodation.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified,

"W. A. HIMSWORTH,

"C. P. C."

In obedience to Mr. Braun's telegram of the 12th July before mentioned, the contract was awarded to Mr. Irving, and the following report of the transaction was forwarded by Mr. Robson to the Department at Ottawa:—

"CANADIAN PACIFIC RAILWAY SURVEY,

"WESTERN DIVISION,

"VICTORIA, B.C., 19th July, 1878.

"SIR,—Agreeably to instructions, and in accordance with advertisement, tenders for transportation of steel rails were received and the result telegraphed to you.

"I have now to report that the contract has been awarded to Captain Irving at the lowest figure (\$6.44 per ton), that the contract and bond have been duly executed, and that the first cargo of the rails will go forward next week.

"I have to call your attention to the fact that I am still without instructions as to insurance of these rails while in transit.

"Referring to this subject, in my letter of the 19th ultimo, I intimated that it seemed probable not more than 100 tons would be at one risk. I now beg to qualify that opinion by stating that it is in contemplation to carry 2,351 tons from Esquimalt to New Westminster on the 'Wilson G. Hunt,' considered a good, staunch steamer; and 760 tons from Esquimalt and 2,155 tons from Nanaimo on the 'Bonanza,' a good seaworthy schooner which will carry from 200 to 250 tons at a time, and will be towed by the said 'Wilson G. Hunt.'

"I have further to add on this subject that, after consultation with their principals, the insurance agents inform me that the rate would be $\frac{3}{4}$ of 1 per cent., with a rebate of 10 per cent.

"Unless instructed on the subject, I shall assume that it is not the intention of the Department to effect an insurance upon the property in question.

"I may be permitted to remark that the rate at which the contract has been taken is very low, but it is satisfactory to know that the work has been undertaken by the party best prepared and most competent to carry it out. But, even in the best of hands, much must necessarily depend upon the nature of the season and consequent stage of water in the Fraser as to the practicability of conveying the whole of the rails to their destination within so limited a period.

"There need be no difficulty, however, about having them all removed from where they now are to some convenient point on the Fraser within the specified period, thereby stopping this process of rusting and rental outlay involved in their remaining where they are.

"Herewith I beg to hand you copies of specifications, contract and bond.

"I have the honour to be, Sir,

"Your obedient servant,

"JOHN ROBSON,

"*Paymaster and Purveyor, C.P.R.S.*"

"F. BRAUN, Esq.,

"Secretary Department Public Works,

"Ottawa."

Subsequently the rails were insured by Mr. Robson at 67-100 of 1 per cent. under instructions from the Department.

On the 21st October, and again on the 26th October, 1878, Mr. Braun telegraphed Mr. Robson asking for information as to the progress of the transportation under the contract. On the 29th October Mr. Braun sent the following message :

"(Telegram.)

"DEPARTMENT OF PUBLIC WORKS,

"OTTAWA, 29th October, 1878.

"Notify John Irving to stop moving rails and other railway material from Vancouver Island, Langley or other points after thirty-first (31st) instant when contract expires—take possession of rails at the several points and report quantity.

"F. BRAUN,

"*Secretary.*

"To JOHN ROBSON, C.P.R.S.,

"New Westminster, B.C."

To which Mr. Pearson, a clerk in the office in British Columbia, answered that Mr. Robson was in the interior, but would be down the Friday following.

On the 30th October, Mr. Braun sent the following message :—

"30th October, 1878,

"(Telegram.)

"Stop moving rails and other railway materials from Vancouver Island, Langley and other points after 31st instant, when your contract expires.

"F. BRAUN,

"*Secretary.*

"JOHN IRVING,

"New Westminster, B.C."

After several intermediate telegrams, which need not be reported, the following letter was sent by Mr. Robson :—

" CANADIAN PACIFIC RAILWAY SURVEY,

" WESTERN DIVISION,

" NEW WESTMINSTER, B.C., 6th November, 1878.

" DEAR SIR,—I have the honour to acknowledge the receipt of three telegrams, dated 21st and 29th October, respectively, relating to the transport of steel rails, &c., all of which came during my absence in the interior; and I now beg to report for the information of the Minister as follows:—

" 1. Immediately on receiving your telegram of the 29th October, I served a notice upon the contractors to discontinue moving rails and other railway materials; and I took possession of said rails, &c., at the places of deposit, excepting some 242 tons water-borne at the time but now in course of landing at Langley.

" 2. As the matter stands now, 3,584½ tons have been transported from Vancouver Island (3,484½ tons from Esquimaux and 100 tons from Nanaimo) to the Fraser River. Of that amount about 2,000 tons are at Yale, and the remainder at Langley and New Westminster, mostly, however, at Langley.

" I have said about two thousand tons are at Yale, because there being only 562½ tons stacked. I have only the contractor's word, but judging from the piles there seems to be no reason to question the accuracy of the statement.

" 3. The 400 tons, or thereabouts, lying at the wharf at New Westminster will, if permitted to remain where they are, become liable to wharfage charges.

" 4. Of the rails landed at Yale, less than 600 tons have been stacked, the remainder still lying on the beach, where they cannot remain over winter without risk of loss during spring freshets; consequently I asked for instructions in my telegram of 1st instant, respecting the disposition of these rails.

" I am, Sir,

" Your obedient servant,

" JOHN ROBSON,

" Paymaster and Purveyor, C. P. R. S.

" P. S.—Since writing the within your telegram of the 4th instant has been received, and will be duly attended to.

" F. BRAUN, Esq.,

" Secretary Public Works,

" Ottawa."

This was followed by a letter from Mr. Pearse, the resident engineer:—

" PUBLIC WORKS DEPARTMENT,

" VICTORIA, B.C., 8th November, 1878.

" SIR,—I have the honour to acknowledge the receipt of your telegram, dated October 30th, instructing me to see that no more steel rails were removed after the 31st ult. This telegram only came to hand at 10 a.m. on the 2nd instant, and as I knew that the contractor for their removal had gone to Nanaimo for a cargo, I consulted with the Hon. Mr. Walkem as to the possibility of obtaining the services of a war vessel to take me to Nanaimo for the purpose of placing some trustworthy person in charge of the rails. We found, however, that we should lose a great deal of time by this, even if it were possible, which was very doubtful, so I determined to sail on Sunday morning the 30th inst., in the American vessel "California," whose commander courteously gave me a free passage. We arrived at Nanaimo at 4

p.m., but on our way up sighted the contractor's vessel, with a cargo of 250 tons of rails on board, just entering the Frazer. It was impossible to catch him, and equally impossible, had we done so, to have compelled him to return with the cargo to Nanaimo. I have placed the remainder of the rails, possibly about 2,000 tons, in charge of the Provincial Government Agent at Nanaimo, with instructions to see that no more rails are removed. Mr. Walkem placed the services of that gentleman at my disposal in the matter. I have also notified the contractor of the substance of my instructions and warned him against proceeding further in his contract. On my return to Victoria I inspected the line of the proposed telegraph between Nanaimo and that city.

"I have the honour to be, Sir,

"Your most obedient servant,

"V. W. PEARSE,

"Resident Engineer."

"F. BRAUN, Esq.,

"Secretary Public Works Department,

"Ottawa."

On November 15th, 1878, Mr. Robson reported that \$3.22 per ton would be a fair compensation for the transport of the rails left at Langley, and that the contractor claimed some compensation for a wharf built by him at that place, as it would be of service in the subsequent removal of the rails. On the 29th November the contractor wrote as follows:—

"NEW WESTMINSTER, 29th November, 1878.

"SIR,—I have the honour most respectfully to bring to the notice of the Honourable Minister of Public Works (through you), the loss I sustain in consequence of the Government cancelling my contract for transporting steel rails from Esquimalt and Nanaimo to Yale. You are aware that the preparations necessary for carrying out the contract have been large and costly; and unless I am permitted to complete the contract, I submit with great respect that the Government pay the loss I sustain. It is certainly correct that the work was not completed at the time the contract stipulates, but it is equally true and well known that, considering the limited means available for transportation, the very utmost that could be done under the circumstances for faithfully carrying out the contract has been done by me.

"I, therefore, venture to hope that the Government will favourably consider my case and make me such an allowance as they may deem under the circumstances reasonable.

"I have the honour to be,

"Your obedient servant,

"JOHN IRVING.

"To JOHN ROBSON, Esq.,

"New Westminster."

The contractor founded a claim against the Government on the stoppage of the works as above mentioned. This was settled, without any loss to the Government, by Mr. Irving being permitted to continue the transportation under the terms of the original contract.

The amount paid up to the date of our commission on this matter was :—

To 30th June, 1879..... \$9,660

CONTRACT No. 40.

Engine House.

By this contract, dated the 5th August, 1878, Charles Louis Gouin, James Murphy and Joseph Upper covenanted to erect and complete a ten-stall engine house according to specifications attached to the contract, to be finished by the 1st September, 1879, receiving therefor \$30,500, and, if necessity should arise, to add such further works as were mentioned in the contract, then an additional price stated for the extra work in the body of the contract.

On the 20th May, 1878, advertisements were issued from the Department at Ottawa, asking for tenders for this work up to noon of the 29th June, 1878, stating that specifications and other particulars could be obtained on application to the District Engineer at Winnipeg, or at the office of the Engineer-in-Chief in Ottawa.

On the 15th July, 1878, the tenders received were opened in presence of Mr. Trudeau, the Deputy Minister, and Mr. Braun, the Secretary of the Department. The schedule prepared upon that occasion, in the usual way, showed that six offers had been made, varying from \$30,500 to \$45,500. The lowest tender was made by Messrs. Gouin & O'Meara, at \$30,500. Subsequently Mr. O'Meara requested to have his name withdrawn from the transaction, and the names of Messrs. James Murphy and Joseph Upper to be inserted instead. This change was approved of by the Department, and the following Order in Council passed to confirm it :—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 2nd September, 1878.

"On a report dated 10th August, 1878, from the hon. the Minister of Public Works, stating that the lowest tender received for the erection of a ten-stall engine house at Selkirk for the C. P. Railway was from Messrs. C. S. Gouin and M. O'Meara, jr.

"That Mr. O'Meara was afterwards asked leave to withdraw his name from the tender, and Mr. Gouin requested that the names of James Murphy and Joseph Upper be put in lieu thereof in the contract, that as Messrs. Murphy and Upper have the reputation of being good contractors, he, the Minister agrees to this, and the names of Messrs. Murphy & Upper, have accordingly been associated with that of Mr. Gouin in the contract.

"The Minister recommends that the contract entered into with Messrs. Gouin, Murphy and Upper for the erection of the engine house be approved.

"The Committee submit the above recommendation for your Excellency's approval.

"W. A. HIMSWORTH,

"C.P.C."

The evidence shows that this contract was let upon the lowest available offer and without any undue advantage to the contractor.

The work was completed satisfactorily and taken off the hands of the contractors. Some extras were required as provided for in the terms of the contract, and were paid for as follows :—

180 cubic yards earth at.....	25
10 " rock "	1.50
117 yards masonry "	5.00
467 " drain "	5.00

In addition to these which had been provided for as before mentioned, there were other charges which were extras beyond the arrangement entered into at the time of making the bargain. One was for increasing the diameter of turn-table to 50 feet, \$200; and removing turn-table from Selkirk to Emerson, \$105.

The work has been done satisfactorily, and has been paid for as follows :—

To 30th June, 1880..... \$33,785

CONTRACT No. 41.

Railway Construction.

By this contract, dated the 7th March, 1879, Thomas Marks, John Ginty, Patrick Purcell and Hugh Ryan, covenanted to construct and complete, according to specifications, including track-laying and ballasting, the line of Railway from English River to Eagle River, about 118 miles, receiving therefor the prices set out in the contract as applying to the respective classes of work to be performed.

There were two sets of prices arranged for, one (the lower rate) to apply if the work should be completed by the 1st July, 1883, and ready for the passage of through trains by the 1st July, 1882. The gross sum at these rates, upon the quantities then estimated would be \$2,203,896.

The other, the higher rates, were to apply if the work should be completed by the 1st July, 1882, and ready for the passage of through trains on the 1st July, 1881. The gross sum, at these rates, would be \$2,300,196.

The contract contained a condition that if it should appear that, at the rates named, the intended total expenditure (2,203,896) would be exceeded, then the work might be stopped; and that no work beyond that amount should be done unless first authorized by the Minister.

Papers connected with the letting of this contract and the following one, No. 42, are printed (as 43 M and 43 E) in the sessional papers of 1879, and also in a return to the House of Commons upon the subject, dated the 31st March, 1880.

In August, 1878, there was a gap of 185 miles between the portions under construction at the two ends of the railway between Thunder Bay and Red River. Tenders were invited by advertisement, dated the 13th August, 1878, to be received up to 1st January, 1879.

In November, 1878, the Government desiring to get more accurate information concerning the details of the work to be executed than could be afforded in time to permit of satisfactory tenders so early as the day thus named, the Department extended the time until the 15th January, 1879, and then, finding that the information was not so complete as was expected, and was not likely to be obtained so as to be available at the end of that period, the time was again extended until the 30th January, 1879, of which extensions due notices were given by advertisement.

Upon the first occasion the advertisement stated that the work was to be divided into three sections.

- (1.) From the Westerly end of the 25th Contract, English River, to Raleigh, about fifty miles.
- (2.) From Raleigh to Eagle River, about sixty-eight miles.
- (3.) From Eagle River to Keewatin, about sixty-seven miles.

The distances thus named were not changed in the advertisements, but all tenders being required to be made on forms according to specifications prepared at the Department, it was intimated that these would be furnished to applicants, and these forms and specifications were framed so as to permit of offers in the three following shapes.

Form A. English River to Eagle River, 118 miles.

Form B. Eagle River to Keewatin, 67 miles.

Form C. English River to Keewatin, 185 miles.

This new feature of inviting, with the others, offers for the whole length, was adopted upon the view of Mr. Fleming, the Chief Engineer, that if contractors possessing sufficient skill and means would undertake the entire distance, the completion would probably be secured at an earlier period than if done under separate contracts, but for fear the work as a whole should be too great to attract proper competition, tenders were also asked for in relation to each of the two sections last mentioned, the easier work being on the longer of such divisions.

In the afternoon of the day named for the final receipt, all the tenders were opened in the presence of Mr. Trudeau, the Deputy Minister, Mr. Braun, the Secretary, Mr. Fleming and Mr. Marcus Smith, Engineers.

The following report and other documents are recorded in the Department on this subject:—

“ CANADIAN PACIFIC RAILWAY,
“ OFFICE OF THE ENGINEER-IN-CHIEF,
OTTAWA, 1st February, 1879.

“The Honourable

“ The Minister of Public Works

SIR,—On the 30th ultimo, at noon, the time had elapsed for the reception of tenders for the construction of that portion of the Pacific Railway between English River and Keewatin, 185 miles.

“It had previously been arranged that the tenders should be opened at 2 o'clock in the afternoon. Accordingly the Secretary, F. Braun, to whom the tenders were addressed, laid on the table all the tenders received. They were opened, numbered and endorsed in the usual way, in presence of the Deputy Minister, Mr. Trudeau, Mr. Marcus Smith, the Secretary and myself.

“We first saw that the prescribed conditions with respect to an accepted bank cheque accompanying each offer, the printed forms, and other matters, were strictly complied with.

“In each case that the conditions were not complied with, the tenders were thrown out as irregular. The regular tenders only were recorded as they were opened, on sheets 1, 2, 3 and 4, which accompany this.

“The following is the number of regular tenders received:—

Rails to be laid 1st July, 1882.

Form A. English River to Eagle River, on Sheet No. 5.....	17
Form B. Eagle River to Keewatin, on Sheet No. 6.....	12
Form C. English River to Keewatin, on Sheet No. 7.....	11

Rails to be laid 1st July, 1881.

Form A. English River to Eagle River, on Sheet No. 8.....	20
Form B. Eagle River to Keewatin, on Sheet No. 9	12
Form C. English River to Keewatin, on Sheet No. 10.....	13
	— 45
	—
Total.....	85

"The tenders being opened and properly registered, I asked Mr. Marcus Smith to make a critical examination of the six lowest tenders for the separate sections A and B and for the combined section C, taking care to have the printed quantities accurately moneyed out at the rates given in the tenders, in order to test the accuracy of the total amounts in each case.

"I herewith enclose Mr. Smith's report, and I would direct attention to what he says, with much of which I concur.

"First, he refers to the tenders on Form A section, English River to Eagle River; second, he takes up the tenders on Form B section, Eagle River to Keewatin.

"He points out what is perfectly true, that there are some manifest errors and inconsistencies in the lower tenders. I could not, therefore, recommend their acceptance as they now stand, and to attempt to correct the mistakes would alter the relative amounts.

"Coming to the tenders on Form C, for the combined section from English River to Eagle River, and Eagle River to Keewatin, I find No. 15 to be the lowest. The parties tendering being Messrs. Morse & Co. (Morse, Nicholson & Marpole), of Toronto, the amount being \$5,699,707.

"There are certain advantages of having the whole work placed under one contract, but these advantages would be of little avail, unless the contractors had prices sufficient to enable them to execute the work, and unless they were men of well-known experience and contracting capacity, in a case circumstanced like this, and involving such an enormous outlay. I have not sufficient personal knowledge of the gentlemen whose names are attached to this tender, to judge, and I am at a loss to understand how they can possibly do the work at the exceedingly low rates which they propose to do it for. Had the rates in their tender for the heaviest kinds of work been higher, and had enquiries which I have made, indicated that Morse & Co., had unquestionable experience in similar works and ample resources at their command, I would have at once recommended the Government to award them the contract for the combined section. I consider, however, that it would be hazarding the satisfactory completion of the work, and the early opening of the line, to place the whole 185 miles in their hands.

"I would rather advise relieving them of the difficult section of 67 miles east of Keewatin, their price for which is \$3,364,336, and leave them the remaining 118 miles from Eagle River to English River. This contract would amount to \$2,335,371, and I am of opinion that this work would be sufficiently large to place in their hands, and that it would be inexpedient to give them more, unless Morse & Co. can satisfy the Government that they possess or control greater skill and capacity than I am aware of.

"Referring to Sheet No. 5, I find that there are several parties who offer to execute the section from English River to Eagle River, for less than Morse & Co. With regard to these tenders I would refer to the report of Mr. Smith, the mistakes discovered, the insufficiency

of the prices, and the absence of information respecting the ability and standing of the parties for such a large contract. Messrs. Wardrop & Ross, of Toronto, (No. 10), well known men, however, undertake to do the same work for practically the same amount as Morse & Co., the difference between the totals in these tenders being only about \$1,000, and which difference may ultimately be found, one way or another, as the quantities may vary in actual execution. Some of Wardrop & Ross' prices are very low, but these men have the reputation of being skilful contractors of wide experience, and not likely to fail in anything they may undertake.

"By awarding this portion of the railway to Morse & Co., or to Wardrop & Co., there would remain the sixty-seven miles from Eagle River to Keewatin, for which, I think, Morse & Co's. prices are inadequate. I find the next lowest tender for this section is No. 11, Andrews, Jones & Co., of Newburgh and Brooklyn, New York, and St. Catharines, \$3,915,942, but I have no personal knowledge of the men, and I can learn nothing in the Department regarding them; besides their prices are somewhat incongruous, and, taken with their tender, generally indicate a want of due appreciation of the difficulties. For example, rock excavation, by far the heaviest item in the tender, is rated at very much less than experienced men think it can be done for, and less than five-ninths the price we are actually paying for the same class of work on the contiguous section west of Keewatin; and again, they do not appear to think that time is an important element to them in executing the work, as they make no offer, except for the shorter period prescribed, indicating, I think, a great lack of knowledge of the peculiarities of the country through which the line is to be built.

"The next tender (No. 25, Fraser & Co.,) Fraser, Grant & Pitblado, of New Glasgow, the amount is \$4,130,707. I know these contractors to be skilful, energetic men, having satisfactorily completed, under my supervision, portions of the Intercolonial Railway and its branches. I would not hesitate to place this work in their hands at the price they offer to do it for.

"By thus dividing the works, I think there is a reasonable probability of its being completed within the specified time, at as low rates as it can be done for—at lower rates indeed than are being paid on the contiguous sections, Nos. 15 and 25, now under construction.

"I am aware that there are objections to discriminating in this or any other way, but of one thing I am satisfied, unless the work be put under contract at prices which will involve the contractors in no serious loss, the consequences will be most unsatisfactory, and it can scarcely fail, in the long run, to cost the public a great deal more than if let in the first place to good, skilful men and at fair paying prices.

"Should the Government be disinclined to discriminate in any way, the only course left is to let the work on the lowest tenders, and deal with the difficulties or disasters which may follow as they arise.

"I have not referred to the tenders for completing the work, so as to have the rails laid throughout by July, 1881. I have always entertained doubts as to the practicability, at a reasonable cost, of accomplishing this. There would not be the slightest difficulty in getting some men to undertake it, regardless of the peculiar circumstances of the case. It would be quite another matter to get the work out of their hands by the time fixed, unless their resources were great and their prices very liberal indeed, such, in fact, as would warrant them in pushing the work at whatever cost.

"I am aware that it is considered of very great moment that the line should be opened for public use as early as practicable. I would accordingly suggest that, in addition to the

stipulation in the 18th clause of the printed form of indenture, that "time" shall be deemed to be of the essence of "this contract," a substantial bonus be offered the contractors for every month they may be in advance of the time, and, on the other hand, a heavy penalty be exacted for every month or week that they may be behind, ample funds being retained in the hands of the Government, out of which to deduct the penalty should it be necessary to enforce it.

"Whichever course the Government may adopt, I would strongly advise that no time be lost in having contracts executed, so as to afford the contractors an opportunity of making an early and vigorous beginning of the work.

"In the country draining into the Lake of the Woods and Lake Winnipeg, the sun is generally very powerful after the month of February, and soon renders the winter roads un-serviceable.

"Full advantage should be taken of the short period that will elapse before the breaking up of the ice, in conveying to the accessible portions of the sections, food for men and horses, explosives, tools, plant and all necessary supplies. Unless this be done, I greatly fear that a great part of the coming summer will be lost before an actual beginning of construction be effected.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"*Engineer-in-Chief.*"

FORM OF TENDER A.

CANADIAN PACIFIC RAILWAY.

English River to Eagle River—118 miles.

(To be opened 1st July, 1882.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1st COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Marks & Conmee.....	13	2,203,896	2,203,869
2	Charlebois & Shanly.....	17	2,207,534	2,207,674
3	Denis O'Brien.....	12	2,305,754	2,310,754
4	Wardrop & Ross.....	10	2,324,499	2,334,499
5	J. R. McDonell.....	18	2,353,602	2,353,602
6	James Goodwin & Co.....	14	2,397,335	.....
7	Robert H. McGreevy.....	26	2,412,520	.....
8	Manning, McDonell & Co.....	19	2,504,523	.....
9	James S. Grant & Co.....	20	2,508,420	.....
10	Purcell, Ginty & Ryan.....	21	2,528,843	.....
11	F. B. McNamee & Co.....	6	2,612,565	.....
12	Walsh & McCarron.....	22	2,661,591	.....
13	Pitblado, Fraser & Grant.....	25	2,699,055	.....
14	Stevens, Turner, Burns & Co.....	23	2,805,794	.....
15	H. C. O'Reilly.....	5	2,825,217	.....
16	Wm. Hendrie.....	3	3,019,766	.....
17	Ferguson, Symmes, Mitchell & Co.....	4	3,190,291	.....

FORM OF TENDER B.

CANADIAN PACIFIC RAILWAY.

Eagle River to Keewatin—67 miles.

(To be opened 1st July, 1882.)

LIST of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1ST COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole.....	15	3,364,274	3,364,336
2	Fraser, Grant & Pitblado.....	25	4,130,707	4,130,707
3	Manning, McDonell & Co.....	19	4,158,933	4,157,933
4	James Goodwin & Co.....	14	4,313,135	4,313,135
5	Wardrop & Ross.....	10	4,343,747	4,347,867
6	F. B. McNamee & Co.....	6	4,404,196	.....
7	Joseph Whitehead.....	8	4,587,064	.....
8	Ferguson, Symmes, Mitchell & Co.....	4	4,682,639	.....
9	Loss & McRae.....	9	4,774,544	.....
10	Denis O'Brien.....	12	4,774,740	.....
11	Robert H. McGreevy.....	26	4,833,005	.....
12	Hunter, Murray & Booth.....	2	4,987,870	.....

FORM OF TENDER C.

CANADIAN PACIFIC RAILWAY.

English River to Keewatin—185 miles.

(To be opened 1st July, 1882.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	1ST COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole.....	15	5,699,645	5,699,707
2	Denis O'Brien	12	6,678,859	6,678,859
3	Wardrop & Ross.....	10	6,668,246	6,682,346
4	James Goodwin & Co.....	14	6,731,000	6,731,015
5	Purcell, Ginty & Ryan.....	21	6,731,614	.....
6	Manning, McDonell & Co	19	6,793,467	.....
7	F. B. McNamee & Co	6	7,021,301	.....
8	Joseph Whitehead	8	7,576,811	.....
9	Ferguson, Symmes, Mitchell & Co	4	7,872,933	.....
10	Loss & McRae	9	8,051,873	.....
11	Stevens, Turner, Burns & Co .....	.....	9,547,181	.....

FORM OF TENDER A.

CANADIAN PACIFIC RAILWAY.

English River to Eagle River—118 miles.

(To be completed 1st July, 1881.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Andrews, Jones & Co.....	11	2,248,585	2,239,525
2	Marks & Conmee.....	13	2,300,196	2,300,196
3	Denis O'Brien.....	12	2,421,041	2,426,291
4	Charlebois & Shanly.....	17	2,423,036	2,431,386
5	Wardrop & Ross.....	10	2,440,724	2,440,724
6	Hunter, Murray & Booth.....	1	2,490,980	.....
7	J. R. Macdonnell.....	18	2,505,747	.....
8	James Goodwin & Co.....	14	2,573,297	.....
9	Purcell, Ginty & Ryan.....	21	2,604,643	.....
10	James S. Grant & Co.....	20	2,633,842	.....
11	Manning, McDonell & Co.....	19	2,726,172	.....
12	Robert H. McGreevy.....	26	2,774,328	.....
13	H. C. O'Reilly.....	5	2,825,217	.....
14	Pitblado, Fraser & Grant.....	25	2,860,199	.....
15	Hurlburt, Crennell & Campbell...	24	2,945,707	.....
16	F. B. McNamee & Co.....	6	2,976,565	.....
17	Stevens, Frazer, Burns & Co.....	23	3,086,373	.....
18	Wm. Hendrie.....	3	3,160,766	.....
19	Walsh & McCarron.....	22	3,202,459	.....
20	Ferguson, Symmes, Mitchell & Co.....	4	3,366,488	.....

FORM OF TENDER B.

CANADIAN PACIFIC RAILWAY.

Eagle River to Keewatin—67 miles.

(To be completed 1st July, 1881.)

List of Tenders received, 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole.....	15	3,467,506	3,467,568
2	Andrews, Jones & Co.....	11	3,915,942	3,915,942
3	Manning, McDonell & Co.....	19	4,470,275	4,470,272
4	Wardrop & Ross.....	19	4,647,809	4,652,196
5	James Goodwin & Co.....	14	4,716,606	4,716,606
6	Joseph Whitehead.....	8	4,722,954	.....
7	Ferguson, Symmes, Mitchell & Co....	4	4,920,230	.....
8	Denis O'Brien.....	12	5,013,477	.....
9	F. B. McNamee & Co.....	6	5,136,796	.....
10	Loss & McRae.....	9	5,213,544	.....
11	Hurlbert, Crennell & Campbell.....	24	5,250,852	.....
12	Robert H. McGreevy.....	...	5,799,606	.....

FORM OF TENDER C.

CANADIAN PACIFIC RAILWAY.

English River to Keewatin—185 miles.

(To be completed 1st July, 1881.)

LIST of Tenders received 30th day of January, 1879.

No.	Name.	Envelope No.	2ND COLUMN.	
			As per Tender.	As Revised.
			\$	\$
1	Morse, Nicholson & Marpole	15	5,937,670	5,937,732
2	Andrews, Jones & Co	11	6,062,559	6,062,559
3	Purcell, Ginty & Ryan	21	6,903,364	6,903,364
4	Denis O'Brien	12	7,012,802	7,012,802
5	Wardrop & Ross	10	7,088,533	7,092,920
6	James Goodwin & Co.	14	7,394,428	7,428,778
7	Manning, McDonell & Co.	19	7,567,590	.....
8	F. B. McNamee & Co.....	6	7,728,251	.....
9	Joseph Whitehead	8	7,803,141	.....
10	Hurlbert, Crennell & Campbell	24	7,916,839	.....
11	Ferguson, Symmes, Mitchell & Co.	4	8,286,719	.....
12	Loss & McRae	9	8,944,838	.....
13	Stevens, Turner, Burns & Co.....	23	10,501,899	.....

Sir Charles Tupper, then the Minister of the Department of Public Works, has testified that the importance of getting this work done at as early a day as possible would have induced the expenditure of a larger sum under one contract, for the whole distance, than might have been called for by separate contracts; that the increased price which was asked in this case by the tender for the whole line under the Form C as aforesaid, over the aggregate of the prices demanded by the lowest offers for the separate sections, would not have been of itself any reason for not accepting the tender for the entire distance, and had this one of Morse & Co. at \$5,699,645 emanated from contractors of sufficient strength and resources, it would have been favourably considered; but that, as far as could be ascertained, placing the work in their hands would not have been likely to secure the advantage for which the higher price would be willingly paid, therefore it was decided to let the work by sections.

In addition to the three methods above mentioned in which tenders had been invited, namely, for the eastern link of 118 miles, the western link of 67 miles, and the whole distance of 185 miles, offers had been asked by the said advertisement, to be based on different prices for each of these distances according to the time at which the tenderer was willing to finish the work.

Each tender had two columns, the one to contain the price asked for completing the work by the 1st July, 1883, and ready for passage of trains by the 1st July, 1882; the second, for completing each stage one year earlier, *i.e.* the whole by the 1st July, 1882, and the passage of trains by the 1st July, 1881. Where any distinction is made in the tenders on this subject, the price asked for the earlier period is higher than the price asked for the later period.

Mr. Fleming pointed out that taking the earlier period as a basis for contracts would lead to disappointment and an unnecessarily high price, because it would be in effect promising a rate which could not be earned, and he recommended adopting the later periods and lower prices as the basis of the bargain, subject, however, to a bonus being paid if the work should be done earlier than the contract positively called for. This course was adopted by the Department, and steps were taken to deal with the tenders on the basis of the longer periods and lower prices.

It will be noticed that Mr. Fleming's report above set out recommends negotiating at once with some of the tenderers who had not made the

lowest offers, and he gives what seems to us to be valid reasons for so doing; but, according to the evidence of Sir Charles Tupper, the Department felt that to be an embarrassing proceeding, owing to the fact that the eligibility of the parties had been established according to a prescribed test, namely, the deposit of a stated sum with the tender, and therefore the course of applying first to the lowest tenderers was followed.

The lowest tender for section A, on the long term, for completion, was made by Messrs. Marks & Conmee, at \$2,203,396, and it is the basis of this contract, No. 41, now under consideration. The prices and the total sum named in the tenders were not in this case taken as a matter of course to be those intended by the persons who submitted them. Mr. Fleming asked Mr. Marcus Smith to revise the calculations, and also to consider the offers in respect to their reasonableness.

The following is Mr. Smith's report on the subject:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, January 31st, 1879.

“SIR,—In accordance with instructions, I herewith enclose an abstract of six of the lowest tenders for the construction of that portion of the Canadian Pacific Railway between English River and Keewatin, 185 miles, with some remarks on the same:—

“Form A, English River to Eagle River, 118 miles. The lowest tender on this form is No. 13, Marks & Conmee, but the rates are not consistent; there are also some evident errors, and some of the items betray a want of knowledge of the work, or else are used disingenuously to lower the bulk sum, or perhaps in the hope that other work will be substituted, for instance:—

“1st. Platform of logs in crossing muskegs, the rate put down is less than half a cent per cubic foot of timber.

“2nd. Earth borrowing, with haul of 1 to $1\frac{3}{4}$ miles, the rate is 10 cents per cubic yard, which must have been intended as additional to the ordinary rate of 25 cents. This corrected would increase the amount by \$52,500.

“3rd. Bridge masonry, \$3.00 per cubic yard; culvert, \$4.00 per cubic yard; concrete, \$1.00 per cubic yard. All these rates are absurd.

“4th. Cast-iron pipe, \$3.50 per foot run. This is about one-half the price of the metal.

“The next lowest is No. 17, Charlebois and Shanly. There are some inconsistencies in this, and generally the rates are exceedingly low, such as would be suitable in the settled portions of the Dominion. Some of the rates for timber are just what the rough timber would cost, so that there is no allowance for labor in putting it in the work. This tender betrays a want of knowledge of the difficulties in prosecuting work in an outlying, unsettled country.

“The third is No. 11, Andrews, Jones & Co., and is extended only in the second column.

“The rates are exceedingly low in the main items of rock and earth excavation.

“The fourth in order is No. 12, O'Brien.

“There are some inconsistencies in this tender.

"Crib-wharfing is put down at \$2.50 per cubic yard, and ballasting the same as earth excavation, making no allowance for haul and lifting track.

"The fifth is No. 10, Wardrop & Ross. The rates for rock excavation and masonry are excessively low, otherwise the items are generally consistent.

"Form B, Eagle River to Keewatin, 67 miles. The lowest tender for this is No. 15, Morse & Co. The rates on the large items of rock and earth excavation, ties and ballasting are excessively low, and are altogether inconsistent with our knowledge of the difficulties of access to the country, the nature of the rock and the experience of the cost of contiguous works. I do not think it possible that the works could be carried through at the rates in this tender, and, if attempted, a breakdown may be expected, involving loss of time and ultimate additional cost. The next in order is No. 11, Andrews & Co., and the rates are extended only in the second column, which clearly indicates want of knowledge of the difficulties of the country. There are some inconsistencies, also, which show a lack of information as to the nature of the rocks. Solid rock excavation is put down at \$1.50 per cubic yard, and the rock borrowing, that is, widening the cuttings, at \$1.80 per cubic yard. The large-sized timbers which will probably have to be imported, are put down at about cost price, leaving nothing for labor in work. The rate for ties is also low, as timber is scarce in this section. I should doubt the possibility of carrying out the work at the rates in this tender without loss. The third in order is No. 25, Fraser, Grant & Pitblado. The rates in this tender are rather low on the large items, but generally consistent, except those for timber, which indicate that the parties tendering are not aware of the scarcity of good sized timber on this section. The next three tenders are Nos. 19, Manning; 14, Goodwin; and 10, Wardrop. These call for no special remarks, as they are generally consistent. The last two are the best.

"Form C, English River to Keewatin, 185 miles. The lowest tender on this form is No. 15. The rates for rock excavation, ties and some other items seem absurdly low, and betray ignorance of the difficulties of the country, scarcity of timber, etc., and a want of practical knowledge of the nature of the rocks, the great cost of getting forward plant, machinery and supplies for men and horses. The rates seem more applicable to sandstone or limestone, in a well settled country, with good roads, and it would be contrary to all our experience with contiguous contracts to expect that the work could be carried through at the rates in this tender.

"The consequence of a breakdown would be delay, by which the business of the country, and the colonization of the North-West Territories, would suffer; besides, a great additional cost would be entailed in re-letting the work.

"The next in order is No. 11, Andrews. This is carried out only in the second column, and the same remarks apply to it as to the last, though in a somewhat different degree. The two tenders have a strong family resemblance, with a little transposition of the low rates. I should not consider either of them good tenders or likely to have good results if accepted.

"The tenders next in order are No. 12, 10, 14 and 21, to B. W. R. Goodwin. The rates for rock excavation in No. 12 seem barely sufficient to cover actual cost, and the large sized timber would certainly cost more before it reached the points where required than the rates given for it in the work, thus allowing nothing for labor; otherwise this tender seems tolerably consistent. The last three tenders seem to have been well considered, and may be classed as fair and honest tenders. No. 10 has no rates for the several items, but the totals are those of the tenders by the same parties for Forms A and B.

“ Attached to No. 14 is a proposal to construct the whole of the works between English River and Keewatin for a fixed sum. The party proposes to reduce the quantity of earth excavation by a process that appears feasible, though at somewhat greater cost per cubic yard. They could probably effect a considerable saving on the whole, as also, a rock excavation, and long hauls by substituting structures at some points.

“ I have extended the *net* quantities at rates to bring the whole amount within this bulk sum. These rates would be moderate, but without a due allowance for contingencies, which might be considerable, in crossing the many arms and bays of lakes. The party, however, asks to have the benefit of any other reductions in quantities so as to cover this contingency.

“ If the proposal were in order I would consider it the best tender received, viewed with the light of our experience in other contracts where the final amounts have so greatly exceeded those estimated at the letting of the contracts.

“ I am, yours very truly,
“ MARCUS SMITH.”

“ SANDFORD FLEMING, Esq.,
“ Engineer-in-Chief.

ABSTRACT of Tenders for the construction of the Railway between English River and Eagle River.

FORM OF TENDER A.—118 MILES.

No.	Contractors.	Sureties.	Year 1883.	Year 1882.
			\$	\$
13	{ Thomas Marks James Connec.....	{ A. M. Smith W. W. Keighley	2,203,869	2,300,196
17	{ A. Charlebois E. Shanly	{ L. Z. Mallette. A. Bowie	2,207,674	2,431,386
12	Denis O'Brien	{ R. Warmington Louis Paré	2,310,754	.....
11	{ Andrews, Jones & Co. John P. Andrews N. F. Jones..... J. H. Drake	{ Albert Chatfield John Heney .....	.....	2,239,525
10	{ John Wardrop John Ross	{ A. Myers John W. Wardrop	2,334,499	2,440,724
18	J. R. Macdonell.....	{ Joseph Kavanagh R. W. Cruice	2,353,602	2,505,744

**ABSTRACT of Tenders for the construction of the Railway between Eagle River
and Keewatin.**

FORM OF TENDER B.—67 MILES.

No.	Contractor.	Sureties.	Year 1883.	Year 1882.
			\$	\$
15	{ G. D. Morse Frank Nicholson..... R. Marpole	{ Close A. J. Thompson Walker Morley	3,364,336	3,467,568
11	{ Andrews, Jones & Co. John P. Andrews N. F. Jones..... J. H. Drake	{ Albert Chatfield John Heney .....	.....	3,915,942
25	{ James H. Fraser & Co..... George G. Grant..... James M. Pitblado.....	{ Wm. Fraser & Co. John M. Blackie	4,130,707	.....
19	{ Alex. Manning..... John Flint..... Alex. McDonell..... John J. McDonald	{ Joseph Kavanagh..... C. H. Mackintosh	4,157,933	4,470,272
14	James Goodwin	{ E. Griffin A. Mortimer	4,313,135	4,716,606
10	{ John Wardrop John Ross	{ A. Myers John W. Wardrop	4,347,847	4,652,196

**ABSTRACT of Tenders for the construction of the Railway between English River
and Keewatin.**

FORM OF TENDER C.—185 MILES.

No.	Contractor.	Sureties.	Year 1883.	Year 1882.
			\$	\$
15	{ G. D. Morse Frank Nicholson..... Richard Marpole	{ Close H. J. Thompson Walker Morley	5,699,707	5,937,732
11	{ Andrews, Jones & Co. John P. Andrews N. F. Jones..... J. H. Drake	{ Albert Chatfield John Heney .....	.....	6,062,559
12	Denis O'Brien	{ R. Warmington Louis Paré	6,628,859	7,012,802
10	{ John Wardrop John Ross	{ A. Myers John W. Wardrop	6,668,246	7,088,533
14	James Goodwin	{ E. Griffin..... A. Mortimer	6,731,015	7,428,778
21	{ Patrick Purcell..... John Ginty..... Hugh Ryan.....	{ John Turner..... Robert Beaty	6,731,614	6,903,364

On the 12th February, Mr. Fleming, having made enquiries concerning the standing of some of the tenderers, reported as follows:—

“FURTHER COMMUNICATION from Samlford Fleming, Esq., to the Honourable the Minister of Public Works, dated Ottawa, the 12th February 1879, in reference to his Report, dated Ottawa, 1st. February, 1879, on the tenders received for constructing the sections of the Canadian Pacific Railway between English River and Keewatin.

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, February 12th, 1879.

“SIR,—In my report, dated February 1st., on the tenders received for constructing the sections of the Pacific Railway between English River and Keewatin, I felt that I could not advise the Government to accept the lowest tenders for reasons given.

“You deemed it advisable, however, to have enquiries made respecting the resources, skill and experience of the parties who sent in the lowest tenders, and accordingly I was directed, along with Messrs. Trudeau and Smith, first to see Morse & Co., they being the lowest for the whole work. Form of Tender C: We had an interview with Messrs. Morse & Nicholson respecting the firm, and heard all they had to say. It was subsequently explained to them that it would be expedient for them to seek the co-operation of some other persons who had the experience and qualifications, which they appear to want, in conducting a work of such magnitude. Messrs. Morse & Co. have, for some time, been endeavouring to strengthen their hands, but I have been unable to learn that they have succeeded in getting men of sufficient skill and experience to join them in the contract. This is not at all surprising when the extreme lowness of the rates in their tender is taken into account.

“The next tender (Form C) on the list is that of Andrews, Jones & Co., of New York, Brooklyn and St. Catharines, \$6,062,559. I have already referred to these gentlemen in my report of February.

“I have since made enquiries of gentlemen from St. Catherines and others, but I have not succeeded in getting any satisfactory information respecting them.

“The next tender is that of Denis O'Brien. I have had an interview with Denis O'Brien, and have made enquiries about him, and am favorably impressed with him as a contractor. His name appears to stand well in the Department, but his operations appear to have been confined to comparatively small contracts, and I scarcely think it would be expedient to place the whole 185 miles in his hands.

“Immediately above Denis O'Brien come several unexceptional tenders from well-known contractors. The tenders stand in the following order, viz. :—

Wardrop & Ross.....	\$6,682,346
James Goodwin & Co.....	6,731,215
Purcell, Ginty & Ryan.....	6,731,614
Manning, McDonell & Co.....	6,793,467

“Turning to tenders, Form B., Eagle River to Keewatin, I have already referred to the parties who have sent in the two lowest tenders—Morse & Co. and Andrews, Jones & Co. The next on the list is that of Messrs. Fraser, Grant & Pitblado, \$4,130,707. In my report of February 1st I referred to these contractors, and I have only now to state that if, in addition to their skill and experience, they can bring satisfactory evidence of the resources at their command, I am of opinion that the work may be placed in their hands.

"It is more difficult to advise with regard to the tenders (Form A) for the section between Indian River and Eagle River. I can learn nothing about Marks & Conmee to satisfy me that they have the necessary resources, skill, and experience for so heavy a contract, besides which there is an error in their tender which, if corrected, would make their tender not the lowest and would bring us to that of Charlebois & Co., the next on the list.

"I can learn but little of Charlebois & Co. as contractors. Mr. Charlebois is spoken of in the Department as a good business man who has recently turned to contracting, but who has had but little experience in the construction of works of any kind, particularly railways, and that his means are limited. In August last, however, Charlebois & Co. entered into an agreement to construct the Georgian Bay Branch. This, I should say, is a sufficiently heavy contract, and, as far as I am informed about their resources, one which will probably require all their energy and means to carry on.

"The next tenders on the list are those of:—

Denis O'Brien.....	\$2,310,754
Wardrop & Ross.....	2,334,499
J. R. McDonell.....	2,353,602

"It has already been stated that although Morse & Co. furnished no special tender for the section (Form A), their tender, Form B, deducted from their tender, Form C, gives \$2,-335,371. Independently of this, it will be seen that we have several proposals to construct the section from English River to Eagle River, with an extreme difference of less than two per cent., on the whole. It remains for the Government to select one of these; the ordinary course being to begin with the lowest and pass upwards to the next, until parties are reached who can satisfy the Government as to the skill and experience they can bring to bear upon the work, so as to have it completed satisfactorily by the time and according to the conditions of the contract.

I am, &c.,

"Your obedient servant,

"SANDFORD FLEMING,

"Engineer-in-Chief."

On the 13th February the following letter was written by Messrs. Marks & Conmee:—

"OTTAWA, 13th February, 1879.

"SIR,—In the event of section A, of the Canada Pacific Railway, being awarded to our tender, we will associate with us in the contract Messrs. Purcell, Ginty & Ryan, the contractors for the section east of the one in question, and all preliminary arrangements made by them with the Government respecting our tender will be satisfactory.

"We have the honour to be, Sir,

"Your obedient servants,

"THOS. MARKS,

"JAMES CONMEE.

"Hon. Dr. TUPPER, C.B.,

"Minister of Public Works."

After which the following correspondence took place :—

" OTTAWA, 20th February, 1879.

"GENTLEMEN,—In reply to your letter dated 13th February, but received to-day, informing me that in the event of section A, of the Canada Pacific Railway, being awarded to your tender, you will associate Messrs. Purcell, Ginty & Ryan with you in the contract, and that all preliminary arrangements made by them with the Government respecting your tender will be satisfactory, I have to say that the Government are prepared to enter into a contract with you, associated with Messrs. Purcell, Ginty & Ryan, provided the required deposit is made within one week from to-day, but that the contract must be made upon your tender, without any modification of any kind whatever in its terms.

" Yours faithfully,

"CHARLES TUPPER.

"THOMAS MARKS, Esq., and

"JAMES CONMEE, Esq., Ottawa."

" OTTAWA, 21st February, 1879.

"SIR,—We beg to acknowledge receipt of yours of the 20th inst., informing us that the contract for section A, of the Canada Pacific Railway, had been awarded to our tender, providing that we would associate ourselves with Messrs. Purcell, Ryan & Ginty, and that the required deposit would be made in one week from this date, all of which we agree to, and request that the names of Patrick Purcell, Hugh Ryan and John Ginty be substituted for that of James Conmee in the contract, having made arrangements with Mr. Conmee to that effect.

" We have the honour to be, Sir,

" Your obedient servants,

"MARKS & CONMEE.

"Hon. Dr. TUPPER, C.B.,

" Minister of Public Works."

" OTTAWA, 27th February, 1879.

"DEAR SIR,—The tender of Mr. Marks and myself for the construction of section A of the Canadian Pacific Railway, having been accepted, I beg to inform you that it has been agreed that Messrs. Patrick Purcell, Hugh Ryan, and John Ginty shall be associated with Mr. Marks in the contract in my place. I therefore beg that you will allow the said gentlemen, viz., Messrs. Purcell, Ryan and Ginty to sign any contract that may be awarded for the said section, and to substitute the said gentlemen for me in all matters, as if they had tendered instead of myself.

" You will also please allow Mr. Marks to withdraw the deposit of \$5,000 paid in on the said tender, as he has put in his proportion of the security in full.

" I am Sir,

" Your obedient servant,

"JAMES CONMEE.

" The Honourable

" The Minister of Public Works.

" Witness: P. PURCELL."

" CANADIAN PACIFIC RAILWAY,

" OFFICE OF THE ENGINEER-IN-CHIEF,

OTTAWA, 1st March, 1879.

" SIR,—As the tender of Marks & Conmee, Form A, has been accepted, I deem it my duty to again point out what appears to be a mistake.

" I think it is due to those who offer to perform the work that the mistake should be pointed out to them before they execute the contract.

" The price of ordinary earth excavation in the 1st column of the tender is 25 cents, and in the 2nd column 26 cents.

" The next item is earth borrowing, with haul of 1 to 1 $\frac{3}{4}$ miles, and the price in both columns is 10 cents. As this includes a long haul in addition to the cost of excavating, the price should really be higher instead of lower than ordinary excavation.

" The 18th clause of the specification provides that under ordinary circumstances the maximum haul shall be 13 cents, for a haul of 2,500 feet or upward; this rate is to be added to the price of ordinary excavation, viz., 25 cents, making 38 cents per yard.

" The item to which reference is now made is for extra long haul, from 5,280 to 9,240 feet, and which it was intended should have a special rate. I shall be obliged, however, under the specification and printed form of tender to money out all excavation with this extra long haul at only 10 cents.

" I think the contractors should be informed that payments can only be made in conformity with the exact terms of their tender as above set forth.

" I have the honour to be, Sir,

" Your obedient servant,

" SANDFORD FLEMING,

" *Engineer-in-Chief.*

" The Honourable

" The Minister of Public Works."

Messrs. Marks, Ginty, Purcell & Ryan were specially notified of the prices of the tender as pointed out here by Mr. Fleming, and they decided to abide by its exact language, and signed a writing to that effect.

On the 3rd March, 1879, the following Order-in-Council was passed:—

" *Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 3rd March, 1879.*

" On a Report from the Honourable the Minister of Public Works, stating that tenders have been invited and received for the construction of the 185 miles of the Canada Pacific Railway between English River and Keewatin.

" That these 185 miles have been divided into two sections and the tenders made on, forms called 'A' and 'B,' the first 'A' covering the 118 miles between English River and Eagle River, and the second 'B' the 67 miles between Eagle River and Keewatin.

" That the forms of tender used contain two columns, the first being for the insertion of the rates required by the tenderers to complete the works by the 1st July, 1883, and have them ready for the passage of through trains by the 1st July, 1882, and the second column for the rates required to complete the works by 1st July, 1882, and have them ready for the passage of through trains by the 1st July, 1881.

"That the two lowest tenders received for the 67 miles section—form 'B'—for doing the work in the shorter period are:—

"Morse & Co.....	\$3,364,274
"Andrews, Jones & Co.....	3,915,942

"That Messrs. Morse & Co., who have been offered the contract upon their tender, have refused to take it, by a letter addressed to the Department, dated the 25th February, 1879.

"That by direction of Council he, the Minister, has notified Messrs. Andrews, Jones & Co. that a contract would be entered into with them for the section, Form 'B,' provided they made the required deposit of five per cent. upon the amount of their tender by four o'clock p.m., this day, Saturday, 1st March.

"That the lowest tender made for the 118 miles section, Form 'A,' for executing the work in the time stated in the first column or the long period, is from—

"Marks & Conmee.....	\$2,203,896
----------------------	-------------

"And the two lowest for doing the work in the time stated in the second column, or the short period, are from—

"Andrews, Jones & Co.....	\$2,248,585
"Marks & Conmee.....	2,300,196

"That at the written request of Messrs. Marks & Conmee, the names of Messrs. John Ginty, P. Purcell and Hugh Ryan, well known and experienced contractors, have been associated with Mr. Marks in the tender in the place of Mr. Conmee.

"That Messrs. Marks, Ginty, Purcell and Ryan have expressed their ability and willingness to complete the work by the shorter period, and have made the required security deposit of five per cent. on the amount of their tender, or say \$115,000, and recommending that the tender sent in by Messrs. Marks & Conmee on Form 'A' be accepted, and that a contract be entered into with Messrs. Marks, Ginty, Purcell & Ryan in accordance with that tender; that they be paid as the works proceed at the lower rates, viz: those in the first column of the tender until the 1st July, 1881, when if the rails have been laid and the line made ready for the passage of through trains the contractors shall be allowed the higher rates for the whole work, viz: those given in the second column of the tender.

"The Committee submit the foregoing recommendations for Your Excellency's approval.

Certified.

"W. A. HIMSWORTH,
"Clerk Privy Council.

"The Hon. Minister of Public Works."

Subsequently the contract was executed upon the basis of the lower tender as above mentioned.

We conclude that, in obtaining this contract, the contractors got no undue advantage, and that at the time of awarding it the Department had no opportunity of providing for the work covered by it at a cost less than the prices given.

Mr. Caddy became engineer-in-charge of this contract on behalf of the Government as soon as the contractors commenced operations. He was examined as a witness by us. The line on which the contract was let had been run through when he took charge, and the work was then being finally laid out with bench marks, etc., on that portion which was understood to be finally located. Other portions, however, were expected to be amended.

The character of the country over this section is very changeable, varying as often as every five miles—some of it sand, some muskeg, some rock and some clay. About one-third of it was rock and muskeg, and this was the most difficult portion to overcome.

Those parts of the line which were to be amended were not cross-sectioned before the contract, and therefore the quantities on the whole distance were not given with accuracy at the time the contract was let. When Mr. Caddy was before us it was expected that the quantities executed would be very much less than those estimated at the time of asking for tenders, and that the improvements which had taken place in the location would shorten the distance considerably. This witness stated as his opinion that over this contract the distance would be shortened about four and a-quarter miles, and the cost lessened by about four or five hundred thousand dollars in consequence of engineering changes subsequent to the signing of the contract.

Up to the time at which we were taking evidence at Winnipeg, in the fall of 1880, the work done on this section was satisfactory to the Government Engineer, and he stated that the contractors were fulfilling the substance of their agreement. There had been differences of opinion between him and them about some matters, but they had been settled generally without difficulty, sometimes only after reference to the Engineer-in-Chief.

The expenditure on this contract up to the 30th June, 1880, was as follows:—

To 30th June, 1879.....	\$ 22,600
To 30th June, 1880.....	597,300
<hr/>	
Total.....	\$619,900

CONTRACT No. 42.

Railway Construction.

By this contract, dated the 20th March, 1879, James Hugh Fraser, George Johnston Grant, James Macdonald Pitblado, Alexander Manning, John Shields and John James McDonald, covenanted to execute and complete the excavation, grading, bridging, track-laying, ballasting, and other works to be done, according to specifications on that portion of the railway commencing at station 1,290, near the crossing of Eagle River, and terminating at the easterly end of the 15th contract at Keewatin, in length about sixty-seven miles, receiving therefor the prices named in the said contract as applying respectively to the different classes of work mentioned therein, and upon the quantities then estimated, amounting altogether to \$4130,707. A right being reserved to the Government to stop the works should it appear the expenditure would exceed that sum, or at its option to proceed with them at the same rates; such work to be completed by the 1st July, 1883, and ready for passage of through trains by the 1st July, 1882.

Subsequently, by a document, dated the 6th September, 1879, it was agreed between the said Fraser, Grant & Pitblado, of the first part, the said Manning & McDonald and one Alexander Shields, of the second part, and Alexander McDonell, James Isbester and Peter McLaren, of the third part, and Her Majesty, of the fourth part, that the said Fraser, Grant & Pitblado might retire from the said contract, and be relieved therefrom, and that the said Alexander McDonell, James Isbester and Peter McLaren should be accepted in their stead, the said Alexander Shields having previously acquired by assignment the interest which the said John Shields had held in the original contract.

The work under this contract was submitted to public competition by the same advertisement, and tenders for it were received up to the same date as for the adjoining section (contract No. 41). Most of the steps of the Department of Public Works in the progress of the tendering, the consideration of the tenders after they were received, and the reports of engineers upon the character and rank of them have been already described in our report on that contract. What has been there said concerning the period before the decision to deal with the lowest tenderers in each case, may be treated as part of the report on this contract.

The time for receiving tenders expired at noon on the 30th January, 1879. They were opened at two o'clock in the afternoon of that day. For

the present purpose it is not necessary to refer to more than the four lowest tenders for section B. Of these, the substance was as follows :—

	Long Period.	Short Period.
	Trains through on 1st July, 1882.	Trains through on 1st July, 1881.
	\$	\$
Morse, Nicholson & Co.....	3,361,274	3,467,506
Andrews, Jones & Co.....		3,915,942
Fraser, Grant and Pitblado.....	4,130,707	
Manning, McDonald & Co.....	4,158,933	4,470,275

In this case the contract was based on the third lowest tender, the two lower ones were from Morse, Nicholson and Marpole, and from Andrews, Jones & Co., respectively, neither of which last mentioned firms had experience in contracting for works of this character, or means commensurate with the undertaking for which they made proposals. Each of them, for their capital, relied on the probability of borrowing it after they should be offered the opportunity of contracting.

The tenders were opened on 30th January, 1879. After this, three weeks were spent in enquiries concerning the strength and fitness of the different tenderers and in considering the substance and the character of the several proposals, much of it devoted to these two lowest tenders.

At the end of that time, there was strong reason to believe that neither of these offers could be carried out, and that the acceptance of some of the higher ones would be best for the public interest, but the Government did not feel at liberty to take what seemed the wisest course for the reason that a money deposit with each tender was held to give to the party who had made it rights which could not be overlooked.

On the 20th February, 1879, the contract was offered to Morse & Co., the lowest tenderers, and eight days given to provide the specified security. On the 24th February no security being as yet provided, Morse & Co., and Andrews, Jones & Co., who were next above them, and \$551,668 higher, combined and agreed that Morse & Co. should not carry out their tender, but should amalgamate and share the chances on that of Andrews, Jones &

Co. On the 25th February Morse & Co. signed a withdrawal of their tender, and on the 26th delivered it to the Department. (They were subsequently repaid the deposit which they had made, ostensibly as an evidence of their good faith.) On the same day, the 26th February, official notice was given to Andrews, Jones & Co., that the contract was awarded to them, and that until 4 o'clock p.m., on 1st March, the Saturday following, was allowed for furnishing the specified security.

Under the arrangement between these firms it had been agreed that if Andrews, Jones & Co. failed to find half the security they were to abandon all their rights to Morse & Co. On the 28th February, the day before the time was up, they knew at New York that they could not find their share, and telegraphed to a person representing the interests of Morse & Co., consenting that all their rights should be assumed by the last named firm.

On the 1st March the day named for completing the security (nearly \$200,000), Morse & Co. concealing the fact that they claimed the position of Andrews, Jones & Co., deposited at Toronto about one-fourth of this amount, and no more. On the 27th February the Secretary of the Department had notified Andrews, Jones & Co. that no extension of time would be granted; nevertheless, Mr. Nicholson, one of the firm of Morse & Co., being at Ottawa, and having reason to believe that the Government might still extend the time if convinced of the financial strength of Andrews, Jones & Co., induced his firm to make such efforts in Toronto as resulted in a deposit on Monday, 3rd March, of a second quarter of the requisite amount, and in the name of Andrews, Jones & Co. On 5th March no further deposit having been made, the contract was awarded to the tender of Fraser, Grant & Pitblado at \$214,765 higher than that of Andrews, Jones & Co., and became the foundation of the contract now under consideration.

We attempt elsewhere, in our report on "Contract-letting," to show that the system which has prevailed in letting contracts for the construction of the Canadian Pacific Railway is open to this, amongst other objections, that after weeks or months of time, which can be ill-spared by the country, have been spent in the effort to get available offers from suitable persons, the tenders which come in, on prescribed forms, for estimated quantities, according to carefully prepared specifications, and which are ceremoniously opened and considered by authorized officials may do no more than announce to the Government prices, at which the tenderers will *not* do the

work, and which entail as a certain consequence, the loss of still further time to discover their worthlessness.

We proceed to give a detailed report of the negotiations amongst tenderers and other persons who attempted to be interested in this contract, as far as the evidence discloses them, because they seem to us to illustrate some of the weaknesses of the said system—a system which, though the loss of every day was a serious one, and though the transaction was one of several millions, in this case made the temporary deposit of \$5,000 with tenders, which were never believed to be capable of fulfilment, a reason for another month's delay before treating with substantial contractors who, on the reception of the tenders, were reported by the Chief Engineer and understood by the Minister to be efficient and able.

The firm which made the lowest tender was composed of G. D. Morse, F. Nicholson, R. Marpole and A. J. Thompson, the name of the last appearing in the tender only as a surety.

Sometime in January, 1879, Messrs. Morse & Nicholson went to the office of Mr. P. G. Close, a man of capital in Toronto, and asked him to be one of their sureties in tendering for this work. This led to negotiations which ended in an agreement. The parties to this agreement have been examined as witnesses. They do not agree in their respective accounts of the object of the arrangement, or the motives for making it. The following, in our judgment, are the facts properly deducible from their evidence as a whole.

Morse & Co. felt their weakness in not being known as contractors for large works, and feared that though the amount of their tender might not be objectionable, they would be overlooked in favour of some other person, who might be considered more responsible and efficient.

Mr. Close was believed to be a supporter of the Government and he was well known to its members, he was approached with a view of procuring his influence and his recommendation.

Mr. Morse was a cattle exporter, and Mr. Close says that he intended to show the Government that Morse & Co. had Messrs. Gooderham & Worts and other substantial men "at their back." It does not seem to have occurred to either of these negotiators that Messrs. Gooderham & Worts or other substantial men could, by their own act or word, show that they were at the back of Morse & Co. quite as plainly as could be done through any statement of Mr. Close.

In fact, Morse & Co. intended and desired to get through Mr. Close, some more tangible advantage than a mere representation of their circumstances, namely, a consideration of their offer, whatever it might be, more favourable than others of equal merit, and because of influence expected to be exerted by Mr. Close or Mr. Shields over members of the Ministry.

Before these negotiations, Mr. Close and Mr. John Shields had been discussing a method by which they might reap some gain in connection with the Government works then advertised to be let, and Mr. Close at first appeared loth to deal with Morse & Co. unless with the acquiescence of Mr. Shields, so a meeting was arranged and took place between Messrs. Close, Shields, Morse and Nicholson.

After some bargaining an agreement was closed and reduced to writing as follows:—

“ This agreement made this twenty-second day of January, one thousand eight hundred and seventy-nine between G. D. Morse, of the city of Toronto, in the county of York, contractor; R. Marpole, of the town of Barrie, in the county of Simcoe, contractor; G. F. Thompson, of the said city of Toronto, contractor, and Frank Nicholson, of the said city of Toronto, contractor, of the first part; and Patrick George Close, of the said city of Toronto, merchant, of the second part.

“ Whereas the said parties of the first part are tendering for the construction of section B of the Canadian Pacific Railway, and have requested the said party of the second part to assist them in obtaining the said contract for construction, and to waive and abandon all efforts to obtain the said contract on his own behalf, which, in consideration as after mentioned, the said party of the second part has agreed to do.

“ Now, therefore, this agreement witnesseth that if the said party of the second part do exert his utmost and all legitimate endeavours to procure for the said parties of the first part the contract for the said section, and act in their behalf, for this special purpose, as their agent or broker, and abandon all application for the said contract upon his own personal behalf, or upon the behalf of any person or persons other than the said parties of the first part; and provided that the said parties of the first part, or any of them, obtain the said contract, or any portion or part thereof, then it is also agreed and understood as follows, that is to say: The said parties of the first part covenant to pay to the said party of the second part brokerage or commission in relation to the said contract, an amount equal to 2 per cent. of the amount of the said contract, to be paid to the said party of the second part, from time to time, upon the amounts paid to the said parties of the first part, under and by virtue of the said contract and at the times when such amounts are paid to the said parties of the first part; but it is understood that the first three monthly payments, under such contract, shall be paid to, and received by, the said parties of the first part free and clear of any deduction by or payment to the said party of the second part, nevertheless that the said brokerage or commission upon the first three monthly payments shall be charged against, and payable out of the fourth monthly payment, along with the said brokerage upon the said fourth monthly payment to the said party of the second part.

" It is also agreed that the said brokerage be the first charge or lien upon the amounts so paid, from time to time, to the said parties of the first part, save as aforesaid, and the parties of the first part do grant and assign the said 2 per cent. unto the said party of the second part and authorize and direct the Government of Canada, or whomsoever pays the amount of the said contract to the said parties of the first part, to pay the said brokerage to the said party of the second part.

" It is also agreed that this covenant and grant and assignment shall be binding upon the amounts coming, from time to time, under the said contract to the said parties of the first part, whether the said parties of the first part keep the said contract or assign the same, and that this assignment is considered as being made under the statute to render clauses in action assignable.

" It is also agreed that the party of the second part shall have the preference of supplying to the parties of the first part, such goods as they may, from time to time, require in relation to the contract; that is to say, if the said party of the second part offers to supply said goods of as good quality and for as low prices as can be obtained, then the said parties of the first part shall be bound to purchase the same from him.

" In witness whereof the said parties have set their hands and seals the day and year first above written.

" Signed, sealed and delivered
in presence of
JOHN A. PATTERSON.

" G. D. MORSE [Seal]
" R. M. MARPOLE [Seal].
" A. G. THOMPSON, G.D.M. [Seal].
" FRANK NICHOLSON [Seal].
" P. J. CLOSE [Seal]."

Throughout this bargaining and agreement Mr. Close and Mr. Shields were in partnership, though Mr. Close's name alone was used.

The members of the Morse firm in making this arrangement seem to have thought that they had bought an influence which would be of great value to them, that matters could be so manipulated by Messrs. Close & Shields, as to give them decided advantages over competing tenderers—at one time thinking that their tender would be accepted in preference to others—so long as it did not exceed the others by \$100,000; at another time that it would be better to make sure of the contract by making their tender low enough to entitle them to the award of the work, and that Messrs. Close & Shields would be able afterwards so to manage Government officials as to make up the amount by favours from Engineers, and by advances of rails and in other ways.

In proof of their sincerity in this last view, at the suggestion of Mr. Shields, and at almost the last moment before putting in this tender, they lowered its amount very considerably from that at which their firm had, in Toronto, fixed it a few days earlier.

The consideration mentioned in the above agreement as the inducement for Morse & Co's. promise of 2 per cent, was not the true considera-

tion, or at all events, not the main consideration as understood by the Morse firm. The witnesses on the different sides of this bargain differ in their evidence as to the consideration which had been verbally stated; one side saying it was the withdrawal by Mr. Close & Shields from all efforts on their own behalf; the other side, that it was the exertion of their influence in aid of Morse & Co. We think this is not material, and, indeed, that both matters were probably mentioned as considerations

Before the tenders were put in Mr. Shields became interested in the chances for the contract as a partner in the firm of Manning, McDonald & Co., the fourth lowest on the list.

Mr. Shields testified that before the tender was put in there was an understanding between himself, and he thinks, others of the firm of Manning, McDonald & Co., that Mr. Close was to have some, though an undefined share in the tender, the others of that firm say they were not aware of such an arrangement.

On the day of opening the tenders, 30th January, the firms above mentioned as having made the four lowest were largely represented at Ottawa, amongst them were Mr. Morse, Mr. Nicholson, Mr. Marpole, Mr. Jones and Col. Smith, Mr. Fraser, Mr. Grant, Mr. Pitblado, Mr. Manning, Mr. McDonald, Mr. Shields and Mr. Close.

The members of the Morse firm thought Mr. Shields and Mr. Close were at the capital on their behalf. Mr. Shields was the source from whom one of this firm first learnt its rank in the list of competitors, and that it was lowest for the whole distance as well as for section B.

Mr. Marpole testified that Mr. Shields "professed all along to be in close communication with the Department"; but he came to believe that Mr. Shields had no advantage in the shape of information which others had not.

As a fact, it is a common thing in Ottawa, immediately after the opening of tenders for the relative position of the offers to be publicly known, the various tenderers communicating to each other the figures of their respective proposals.

Mr. Nicholson testified that he never learnt that Mr. Shields was able to get for Morse & Co. a position, or rank, or advantage to which they were not entitled as a matter of right.

On the next day after it became known that Morse & Co. had made the lowest offer for the section C (the whole distance), the following agreement was made by which the terms of the previous bargain between Mr. Close and Morse & Co., respecting section B, became applicable with some modification to the other portions of the work :—

"This agreement, made the thirty-first day of January, in the year of Our Lord one thousand eight hundred and seventy-nine, between George D. Morse, A. J. Thompson and F. Nicholson, of the city of Toronto, and Richard Marpole, of the town of Barrie, contractors, of the first part, and P. G. Close, of the city of Toronto, merchant, of the second part.

"Whereas the said parties entered into an agreement bearing date the twenty-second day of January, A.D., 1879, respecting the tendering for and doing the work of section B, of the Canadian Pacific Railway, and whereas it has been thought desirable to tender also for the work on section A of the said railway, and also to tender for both the sections together, now this agreement witnesseth, that the said parties agree that in case they, the said parties of the first part, should obtain the contract for the said section A, or the two together, that then all the provisions and stipulations contained in the said recited agreement shall extend to, and include the contract for said section A, or the two together, as if said section A had been originally included in the said agreement of the twenty-second of January, 1879, excepting only that the brokerage or commission which shall be paid to the said party of the second part, in respect of the amount received on account of said section A, shall be only 1 per cent. instead of 2 per cent.

"And this agreement shall be binding on the heirs, executors and administrators of the said parties.

"Witness our hands the day and year first above written.

"G. D. MORSE,

"per his attorney, F. NICHOLSON.

"A. J. THOMPSON,

"F. NICHOLSON,

"R. MARPOLE,

"P. G. CLOSE.

"Signed in the presence of

"THOS. WATTS."

On the day after the opening, Mr. Marcus Smith made a report on the tenders received. This is set out in our report on contract 41. Concerning this section B, he points out that Morse & Co.'s tender is, on the main items, excessively low, and is altogether inconsistent with a knowledge of the difficulties of access to the country, the nature of the rock, and the cost of contiguous works. He did not think it possible that the works could be carried through at the rates named, and if attempted, he said, a breakdown might be expected, involving loss of time and ultimate additional cost.

As to the tender of Andrews, Jones & Co., he reported that their only offer was to finish the work at the shorter period (*i.e.* the passage of trains

on 1st July, 1881, and completion a year after), that this fact clearly indicated a want of knowledge of the country, and he mentions some of the prices which were too low, amongst others, rock excavation, at \$1.50. As a fact this was by far the largest item on the work. The contractors on the adjoining section were getting \$2.75 for it. He also named rock borrowing at \$1.80. The importance of a reasonably fair price on these two items will be understood when it is mentioned, that at these low rates they would amount to \$2,116,800 out of the total offer of \$3,915,942, for the completion of this work, and Mr. Smith doubted the possibility of carrying out the work, at the rates in this tender, without loss.

On the day after this, viz., on the 1st February, 1879, Mr. Fleming enclosed Mr. Smith's report, accompanied by one of his own, which is also set out in our report on contract No. 41. Mr. Fleming thought that concerning this section the prices named by Morse & Co. were inadequate, and that the prices of Andrews, Jones & Co. were incongruous, and taken with their tender generally indicated a want of due appreciation of the difficulties; and he proceeds to recommend the tender next above Andrews, Jones & Co., that of Fraser Grant & Pitblado, as a proper one to be accepted, representing that he knew these contractors to be skilful, energetic men, who had satisfactorily completed, under his supervision, portions of the Intercolonial Railway and its branches.

These reports not having been deemed sufficient to justify a decision, the Chief Engineer proceeded to make further enquiries respecting the resources, skill and experience of the tenderers, and on the 12th February, 1879, he reported the results to the Minister. This is to be found in our report on contract No. 41. In that he states that he believes Morse & Co., had not succeeded in getting men of sufficient skill and experience to join them in the contract, and that that was not surprising; and after referring to his previous report on the standing of Andrews, Jones & Co., he adds that he had not succeeded in getting any satisfactory information respecting them.

At the end of this time, two weeks had been lost at a most critical period of the year, in deference to this system of letting contracts, and still the Department was so trammelled as to be unable to do what, in our opinion, would have been done on the 1st of February by any private proprietor—that is, to adopt the report of the Chief Engineer, and of his next in command, by accepting the lowest offer from any firm believed to have sufficient skill and resources for the undertaking.

The Minister of the Department gave evidence before us and described the position as embarrassing. He testified that on one side of the question was felt the importance of placing the contract in the most vigorous and efficient hands; and, in the other, getting the work at the lowest possible cost: that it was not felt to be proper to adopt the recommendations of the engineer, to award it to parties having the necessary skill and resources, because the Government had apparently fixed a test or qualification for the work, which was, in the first place, a deposit of \$5,000 with each tender, and, in the second place, to show their ability to deal with the work by a further deposit of 5 per cent. on the bulk sum of the contract.

We do not see how the intention to ask 5 per cent. on the bulk sum of the contract if the contract should be awarded, touches the propriety of deciding not to award it, for under such a decision the second test could not be applied.

In this case the evidence shows that there was reason to believe, that the two lowest tenderers had not asked such prices as would enable them to complete the work without loss, and that they had not sufficient resources to bear a serious loss, and we think the system is not a desirable one which prevented the Department on the 1st of February, from taking the same course which would, in our opinion, have commended itself to a good business man where private funds were at stake, and which after a month's delay was ascertained to be inevitable. We think this case has clearly proved that the deposit of a small sum with a tender does not establish either the good faith or the ability of a tenderer.

And, according to our view of the evidence, it is reasonable to conclude that if it had been necessary to send in with each tender some such substantial security either in the form of money, or of an undertaking from responsible parties, as is suggested by us in our report on "contract letting," neither the tender of Morse & Co. nor of Andrews, Jones & Co., would have made its appearance to embarrass the Government and delay the work as they did in this case.

It is true that about a fortnight after the contract was awarded to them, Morse & Co. did put up nearly \$100,000 in money, but that was not upon their own tender, and it was done upon the chance of taking the work at a sum \$551,668 higher than that named in their own offer. It is plain upon the evidence of the members of this firm, that they put in their tender, not believing or expecting that the work could be done for the price stated in

their offer ; they deliberately made a proposal not expecting to fulfil it, in the belief that something would turn up afterwards to save them from loss. The system which encourages such proposals and permits them to be made with impunity, seems to us to require a radical change.

On the 20th February the contract was awarded to Morse, Nicholson & Co., the lowest tenderers, and that fact was communicated to them by a formal letter from Mr. Braun, the Secretary of the Department. Up to the 24th January no arrangements were made concerning the deposit required from this firm, but on that day, as before mentioned, they and the firm next above them, Andrews, Jones & Co., entered into an arrangement by which Morse & Co. were to decline to fulfil their offer, and the two firms were to amalgamate and take their stand on the offer of Andrews, Jones & Co., which was more than half a million higher..

On the day this agreement was made, Mr. Jones, a partner in the firm of Andrews, Jones & Co., wrote the following letter to the Secretary of the Department of Public Works :—

" OTTAWA, 24th February, 1879.

"SIR,—We have the honour to inform you that we have associated with us Mr. A. La-berge, jun., contractor, of Montreal, in connection with our tenders for the works of construction on the Canadian Pacific Railway between English River and Keewatin, and to state in case our tenders should be amongst the lowest and the works awarded to us, that we are prepared to make the necessary deposit of 5 per cent. immediately, and commence operations at once.

"We might add that our firm is composed strictly of practical railroad men of large experience."

“ We have the honour to be, Sir,

"Your obedient servants,

"ANDREWS, JONES & CO.

"Per N. F. JONES.

“ F. BRAUN, Esq ,

" Secretary, Department of Public Works."

This same firm had previously addressed the Minister of Public Works by a letter dated 6th February, which was as follows:—

“ST. CATHARINES, 6th February, 1879.

"SIR,—It having been rumoured that the tenders in the neighbourhood of 6,000,000, for that portion of the Pacific Railway between English River and Rat Portage—185 miles—will not be considered by the Department, we desire to state that we have every confidence in the figures that we have submitted, and that if the contract is awarded to us, we are prepared to furnish the 5 per cent. required by the Government for its fulfilment, and to proceed with the work immediately on being ordered to do so. We can also satisfy you as to our ability to

carry out the works to a successful completion. All we ask is that our tender may be considered on its merits, and if the lowest that it will receive at your hands favourable consideration.

"We have the honour to be, Sir,

"Your obedient servants,

"ANDREWS, JONES & CO.

"Hon. DR. TUPPER,

"Minister of Public Works, Ottawa."

The firm of Andrews, Jones & Co. were not possessed of means sufficient to enable them to undertake this contract, but they had made arrangements with a wealthy party in New York to find the capital necessary to carry on the works, provided a confidential agent to be sent by that party to Canada should, after enquiring carefully into all the circumstances, so report, as to satisfy him of the safety of the advance. Whether the party alluded to, was one person or a firm we did not deem it necessary to enquire. A Mr. Dillon was either the only person or one of the persons expected to assist Andrews, Jones & Co., and we hereafter mention him as the party. Mr. Dillon named Colonel Smith as his agent to come to Canada on his behalf, and he accompanied Mr. Jones, one of the tendering firm, to Ottawa. After they arrived here, a new arrangement was made by which Colonel Smith might possibly have a direct interest in the contract. He and Mr. Jones agreed that if Andrews, Jones & Co. should get the contract and Colonel Smith should find a certain share of the security, then Colonel Smith might become a partner. He was thus occupying the double position of adviser to his principal in New York, concerning the expediency of his finding the money to support a contract by Andrews, Jones & Co., and of a person to be benefitted by his principal taking that course

Neither Mr. Jones nor Colonel Smith had the power to decide that the necessary money would be forthcoming. Colonel Smith's duty was to return to New York and report, and then his principal was to decide whether he would risk his capital.

It was not known amongst the Canadian tenderers that Colonel Smith's position was that of an agent sent on to report to a capitalist, and that Andrews, Jones & Co. depended on that report as a step towards their procuring the contract.

After the bargain of 24th February, between Mr. Jones and Colonel Smith, in the name of Andrews, Jones & Co., and Morse & Co., by which the withdrawal of the latter was to take place, Mr. Nicholson, on the 25th,

in the name of his firm, wrote the following letter, and on the 26th February handed it in to the Department :

"OTTAWA, 25th February, 1879.

"SIR,—Referring to the interview which our Mr. Nicholson had the honour to hold with you yesterday on the subject of our tender for section "C" of the Pacific Railway, and your statement that section A, part thereof, had been awarded to other contractors, and after duly considering the difficulties to be encountered in the execution of the contract for section "B" alone, especially in view of the decided opinions of the Engineer of the Department, that our prices for the rock work on section "B" are below the actual cost, we have concluded to withdraw so much of our tender as relates to the said section "B."

"We have the honour to be, Sir,

"Your obedient servants,

"MORSE & CO.

"The Hon. Minister of Public Works."

If Col. Smith and Mr. Jones were sincere in the intention and belief, that this contract would be carried out on the basis of Andrews, Jones & Co's tender, and knowing as they did that nothing would be done by Mr. Dillon to support them until Col. Smith should report at New York, we cannot understand why, after agreeing as they did on 24th February for Morse & Co's withdrawal, the only obstacle between them and the contract, Col. Smith did not at once proceed to lay before his principal, the information which he had obtained in Canada. These gentlemen were not altogether confidential with each other. Col. Smith testified that he was not made aware of the letter of 24th February above mentioned, as written by Mr. Jones in the name of his firm to Mr. Braun, in which the statement was made that they had associated themselves with Mr. Laberge, and he added that the assertion of Mr Jones, that he was prepared to make the deposit immediately, was without foundation.

As will be shown further on, Col. Smith had, in Canada, acquired such information concerning the country to be crossed by this section of the railway, that when he repeated it to Mr. Dillon, that gentleman decided on the spot not to make the desired advances, and that, without reference to the length of time which had been allowed for furnishing the security.

This knowledge, on the part of Col. Smith, of the difficulties in fulfilling the contract, might have made him lukewarm about hastening to New York, and might account for Mr. Jones attempting to do what he had said, namely, associate himself with Mr. Laberge or some other new partner. Mr. Jones was not before us ; he lives near New York.

As before mentioned, the withdrawal of Morse & Co. was handed in at the Department on the 26th February; on the same day it was awarded to Andrews, Jones & Co. by the following letter :—

“OTTAWA, 26th February, 1879.

“GENTLEMEN, —I have to inform you that your tender for the construction of section “B” of the Canadian Pacific Railway, has been accepted, and that a contract will be entered into with you in accordance with that tender, provided you deposit the five per cent. required in the specification by four o'clock p.m., on Saturday next.

“Yours faithfully,

“CHARLES TUPPER.”

“MESSRS. ANDREWS, JONES & Co.

After this letter, on the same day, the following formal agreement was entered into confirming and carrying out the above-mentioned agreement of the 24th February, 1879 :—

“Memorandum of agreement made this 26th day of February, A. D. 1879, between Andrews, Jones & Co. of the one part, and Morse & Co. of the other part. Whereas the said Andrews, Jones & Co. have been awarded the contract for the construction of section B of the Pacific Railway of Canada; and whereas, under an agreement between the said parties, bearing date the 24th day of February, instant, one-half interest in the said contract was to be assigned to Morse & Co. as soon as the same should be awarded by the Department of Public Works. Now this agreement witnesseth that the said Andrews, Jones & Co. have assigned (for good and valuable consideration and in pursuance of the said last-mentioned agreement of the 24th instant) and hereby do assign and convey to the said Morse & Co., one-half part and interest in the said contract with the Department of Public Works, and they hereby agree with the said Morse & Co. to make and execute, within ten days after the said contract is executed by the Department, a more formal and effectual transfer of the one-half interest therein to the said Morse & Co., and will enter into proper articles of co-partnership with the said parties for the performance of the said contract pursuant to the terms of the said agreement of the 24th instant.

“And it is hereby agreed by and between the said parties that each of them, that is to say, the said Andrews, Jones & Co., of the one part and Morse & Co. of the other part, shall, within the time required by the Department of Public Works, deposit with the Receiver-General of Canada the five per cent. in respect of their interest in the said contract—that is to say, the said Andrews, Jones & Co. will deposit \$100,000 and Morse & Co. \$100,000, or so much therefore respectively as may be demanded by the Department.

Signed, sealed and executed by the }
said firms in our presence this 26th }
day of February, A.D. 1879. }

ANDREWS, JONES & CO. [Seal]

G. D. MORSE & Co. [Seal]

SAMUEL E. ST. O. CHAPLEAU.

On this day, the following letter asking for an extension of the time for making the deposit was written by Andrews, Jones & Co. :—

"OTTAWA, 26th February, 1879.

"SIR,—We have the honour to acknowledge the receipt of your letter of this date, informing us of the acceptance of our tender for the construction of section "B," Canadian Pacific Railway.

"We regret to observe that you have limited us to less than three days to deposit the 5 per cent. required as security. If it should be necessary for one of us to visit New York in order to complete the deposit, *we trust you will extend the time for that purpose for two or three days.* We will be prepared to execute the contract as soon as may be convenient for the Department.

"We have the honour to remain, Sir,

"Your very obedient servants,

"ANDREWS, JONES & CO.

"The Hon. Minister of Public Works"

On the same day, 26th February, Col. Smith and Mr. Jones went to New York to report to Mr. Dillon and to see if the required advance would be made by him.

The members of the firm of Morse & Co went to Toronto on a similar errand, in the belief that there would be no hesitation or failure on the part of the New York branch, and therefore not expecting to raise more than one-half of the required deposit, which was in all about \$200,000.

The time named, as aforesaid, for putting it up expired on a Saturday, the 1st of March, 1879.

Before leaving for New York, Col. Smith and Mr. Jones arranged with Mr. Chapleau, a corresponding clerk in the Department, to ascertain the answer of the Government to the application for an extension of time and communicate it by telegraph to New York. That answer was as follows:—

"OTTAWA, 27th February, 1879.

"GENTLEMEN,—With reference to your letter of yesterday's date complaining that the three (3) days time allowed you by the Minister for making the required deposit of five per cent. on the amount of your tender for section "B" of the Canadian Pacific Railway, is too limited, and requesting that it be extended two or three days more,—

"I am directed by the Minister to state that for some time past you were aware there was a possibility that you would be called upon to take the contract upon your tender for section "B," and that you cannot reasonably advance the plea that the time allowed you for making your deposit is too short.

"For this reason and in view of the importance of placing those works under contract with the least possible delay, the Minister regrets that he cannot grant your application for an extension of time to enable you to make your deposit

"I have the honour to be, Gentlemen,

"Your obedient servant,

"F. BRAUN,

"Secretary.

"Messrs. ANDREWS, JONES & Co."

The substance of this refusal of the application was communicated by Mr. Chapleau to Andrews, Jones & Co., or to Col. Smith, at New York, on the 28th February.

Col. Smith and Mr. Jones reached New York on the evening of Thursday, 27th February, and saw Mr. Dillon on Friday, 28th. After hearing Col. Smith's statement Mr. Dillon "refused, utterly refused to have anything to do with it." Col. Smith reported to Mr. Dillon, amongst other things, that the country in which this work was to be done "was made up of inlets of water extending into the land," impossible to cross when the ice on the lakes and rivers broke up, that unless the plant and supplies for the work were transported in the winter across the ice, it would be late in the summer before it would be done.

It was during this interview that Mr. Chapleau's telegram announcing the Government's refusal to extend the time for depositing the five per cent. reached the parties. Col. Smith testified that in his opinion Mr. Dillon would not have put up the money whether time had been extended or not; that they parted on that occasion with the understanding that Mr. Dillon would not give the desired help. They endeavoured to persuade another party, but the time was too limited.

In the course of the same examination Col. Smith said that there being no hope of persuading Mr. Dillon, he would not have tried to persuade any one else, and that in his opinion Mr. Dillon's decision did not proceed from the shortness of time, but from the fact that from his (Col. Smith's) statement, he had "made up his mind that it was not a very safe transaction."

In his evidence before us, Col. Smith stated it to be his opinion that it was at that time late to get in supplies, that there ought to have been more time allowed to get them in, but still, perhaps it was not too late.

After he left his friend in New York, on the 28th, Mr. Jones and he finally gave up the attempt to find the security, partially, he says, because Mr. Dillon, did not think it was advisable.

Col. Smith testified that some of the parties who were to join Andrews, Jones & Co. had mentioned to Mr. Jones that there was a feeling against his firm, because it was "exclusively American," and in giving his evidence he seemed to suggest, that that was one reason for taking in Morse & Co. as partners in the transaction.

We gather from the evidence that, although Col. Smith does not say so, he did, in fact, leave Ottawa without any strong hope that Andrews, Jones & Co. would be able to arrange for the funds requisite to secure them a share in the contract, or that he himself should be finally interested in it.

Morse & Co. had employed Mr. Joseph Macdougall as their solicitor at Toronto, and the Hon. William Macdougall was his agent at Ottawa. On the 28th of February, the day before the time was up for finding security by Andrews, Jones & Co., the following telegram was received by the Hon. Wm. Macdougall :—

“ 28th February, 1878.

“ By Telegram from New York to the Hon. Wm. Macdougall.

“ Evident hostile attitude, fatal to project with friends here, forces us to withdraw. Use our rights as if all were held by friends there, and they will be fully transferred. Particulars in letter.

“ N. F. JONES.”

The substance of this was, on the same day, communicated to Morse & Co., at Toronto, who thus became the only persons interested in the tender of Andrews, Jones & Co. This was on Friday, the 28th February. On that Mr. Chapleau telegraphed a second time from Ottawa to Messrs. Andrews, Jones & Co., at New York, that time might yet be granted by the Government, stating that \$50,000 had been put up by Morse & Co. and advising them to reconsider the decision and to put up security. On Saturday, the 1st March, the following telegram was received by Morse & Co :—

“ TORONTO.

“ To George D. Morse.

“ Andrews, Jones & Co. have decided they will not take the work, as they think the time given is not enough.

“ J. N. SMITH.”

The Toronto firm on that day, 1st March, answered this last communication from the New York branch, “ urging them to deposit their security.”

On the same day, Saturday, 1st March, Col. Smith replied to that as follows :—

“ TORONTO.

“ To George D. Morse.

“ Will see the parties Monday, and will telegraph what they will do.

“ J. N. SMITH.”

On the same day, Saturday, 1st March, \$50,000 was deposited by Mr. A. L. Thompson in the Bank of Montreal, at Toronto, to the credit of the

Receiver-General, on "account of contract, section B, Pacific Railway." Without mentioning the name of any party on whose behalf it was deposited, this fact was telegraphed to the Receiver-General on that day as follows:—

"By Telegraph from Toronto.

"OTTAWA, 1st March, 1879.

"A deposit of \$48,950 has been made by A. L. Thompson for your credit, account contract section B, Pacific Railway.

"GEORGE W. YARKER,

"Manager.

"The Hon. Receiver-General.

"Received at 4.30 p.m., 1st March, 'A.C.'"

Some one using the name of Andrews, Jones & Co. wrote from Ottawa to the Minister of Public Works on the 1st March. No one of that firm was then in Ottawa, and Mr. Nicholson, the only member of Morse & Co. then there, did not know who it was.

The following is the letter:—

"OTTAWA, 1st March, 1879.

"SIR,—We beg to inform you that notwithstanding the short period allowed to us, we have deposited to the credit of the Receiver General the sum of \$50,000 as security on account of our tender for section B of the Pacific Railway. We shall complete the deposit of 5 per cent. within one week from the date of the notification to us of its acceptance. As a proof of our *bonâ fides* the first instalment of the deposit will, we trust, be deemed sufficient. We beg to repeat that we are prepared to execute the contract and begin our preparations at once.

"We have the honour to be, Sir,

"Your very obedient servant,

"ANDREWS, JONES & Co.

"The Hon. the Minister of Public Works,

"Ottawa."

On the same day Mr. Yarker's telegram was confirmed by this letter:—

"BANK OF MONTREAL,

"TORONTO, 1st March, 1879.

"SIR,—I have the honour, at the request of Mr. A. L. Thompson, to enclose herewith our deposit receipt for \$48,950.00 payable to your order in six months from date, without interest, and which confirm my telegram of to-day.

"Should the receipt not be used you will please return it cancelled to me.

"I have the honour to be, Sir,

"Your obedient servant,

"GEORGE W. YARKER,

"Manager.

"The Hon. Receiver-General,

"Ottawa."

The default in the deposit on the 1st March, above described, led to no action by the Department on that day. On the following day, the 2nd March, Mr. Macdougall, in company with Mr. Goodwin, a contractor of long experience and known as a man of capital, called on the Minister, and asked whether a day or two longer, to make the necessary arrangements, would be given if Mr. Goodwin should join Andrews, Jones & Co. in the contract. The Minister understanding Mr. Macdougall to be acting in the interest of Andrews, Jones & Co., and ignorant of the fact that they had abandoned their position to Morse & Co., said that he had no hesitation in stating that if Andrews, Jones & Co. could obtain the co-operation of any contractor of standing and resources, or would give the Government reason to believe that that would be the case, he would advise his colleagues that the tenderers should receive a day or two longer. The Minister reported to his colleagues this interview and what had been said. They concurred in his view.

During Monday, 3rd March, and two following days Mr. Nicholson, a member of the firm of Morse & Co., being at Ottawa, and probably aware of what had been said to the Hon. Mr. Macdougall, the agent for that firm's solicitor, telegraphed several times to his firm at Toronto, encouraging them to proceed if possible with furnishing the security.

On Monday, the 3rd March, a second deposit of \$50,000 was made by Morse & Co. on account of this contract, in the Bank of Montreal at Toronto. In this instance the name of Messrs. Andrews, Jones & Co. was connected with the deposit.

This second deposit was advised by steps similar to that of the one on Saturday, namely :—

- (1.) A telegram of 3rd March from Mr. Yarker to the Receiver-General.
- (2.) A letter of the same date confirming it.
- (3.) A letter from Mr. Baker, of the Finance Department, to Mr. Braun, informing him of the receipt of the money.

In each case the actual amount notified was \$48,950, though alluded to by some of the witnesses as \$50,000. On this day, the 3rd March, a letter was received, ostensibly from Andrews, Jones & Co., but no one of that firm was in Ottawa, and Mr. Nicholson, the only member of Morse & Co. then there, did not know who wrote it ; it is as follows :—

"OTTAWA, 3rd March, 1879.

"SIR,—Referring to our letter of the 1st instant, announcing the deposit of some \$50,000 towards the security for our contract, and asking an extension of time in our case for a period equal to that allowed to our predecessors, we have now the honour to state that a further sum of \$50,000 will be deposited to the credit of the Receiver General to day.

"In consequence of the hostile attitude towards us as foreigners, which some member of our firm fancied they discovered in the refusal of the Department to give us the usual time to put up our securities, we have deemed it prudent to associate with our firm two or three Canadian contractors. This has necessarily caused some delay, but as we are ready to execute the contract and commence our preparations at once, we venture to think the Department will not, on a mere question of two or three days time in the completion of securities, deprive us of our acquired right to the contract, and award it to others whose tenders, as we are informed, are not nearly so favourable to the public.

"Already the rumours that the Department would not extend the time in favour of 'Americans,' has greatly embarrassed us in our banking arrangements.

"We have the honour to remain, Sir,

"Your very obedient servants,

"ANDREWS, JONES & Co.

"The Hon. the Minister of Public Works,

"Ottawa."

On that day, the 3rd March, Morse & Co. at Toronto, telegraphed Col. Smith, at New York, as follows :—

"To J. N. Smith, 23 Nassau Street, New York, or 235 Clinton Avenue, Brooklyn.

"Morse & Co's. deposit made. Urge your friends to put up at once. Meet Nicholson at Ottawa, Wednesday."

According to the evidence of Mr. Nicholson this brought no answer. On Tuesday, the 4th March, Mr. Goodwin notified the Minister in writing that he declined to go into the contract, that the figures were too low. The Minister then reported that fact to his colleagues.

On the 5th March, Mr. Nicholson being at Ottawa, and misled by advices from Toronto, wrote the following letter :—

"Received 2.15 p.m., 5th of March.

"OTTAWA, 5th March, 1879.

"SIR,—We have the honour to inform you that the balance of the five per cent. required to be deposited to the credit of the Receiver General on our tender for section B, Pacific Railway, has this day been provided through our agents at Toronto, of which you will receive notice through a bank in Ottawa, before the day closes.

"We have the honour to be, Sir,

"Your obedient servants,

"ANDREWS, JONES & CO.

"The Hon. Minister of Public Works."

In giving evidence, Mr. Nicholson said that, when writing it, he supposed this statement to be correct, but became afterwards aware that it was an error.

In addition to Mr. Fleming's report above referred to, and in which he mentioned the urgency of having the contracts entered into without delay, he stated to the Minister, when Morse & Co. declined to take the contract, that it was a serious matter; for, if the contract was to be let with any hope of carrying out the work—no time could be lost. And upon one occasion, according to Mr. Fleming's recollection, he wrote to the Minister while he was in Council, when some of these matters were being discussed, and used the expression that the loss of a week might mean the loss of a year.

On the 5th March, 1879, a memorandum was submitted to the Privy Council by the Minister, and on the same day an Order in Council was based upon it—they are as follows:—

"(Memorandum).

" OTTAWA, 5th March, 1879.

"On the 6th February, Andrews, Jones & Co. addressed a letter to the Department in which they stated: 'That if the contract is awarded to us, we are prepared to furnish the 5 per cent. security required by the Government for its fulfilment and to proceed with the work immediately.'

"On the 24th February, they addressed a second letter and stated as follows:—'We have associated with us Mr. A. Laberge, jun., contractor, of Montreal, in connection with our tenders for the works of construction on the Canadian Pacific Railway, between English River and Keewatin, and to state, in case our tenders should be amongst the lowest, and the works awarded to us, that we are prepared to make the necessary deposit of 5 per cent. immediately and commence operations at once.'

"That on the 26th February, the tender of Andrews, Jones & Co., on Form B, for the 67 miles between Eagle River and Keewatin, amounting to \$3,915,942, being the lowest, they were informed that they would be awarded the contract provided they made the required 5 per cent. deposit by 4 p.m., on Saturday, the 1st instant.

"They replied: 'That in the event of one of their firm having to go to New York, in order to complete the deposit, we trust you will extend the time for that purpose, for two or three days.'

"They were informed on the 27th February: 'That for some time past you were aware there was a possibility that you would be called upon to take the contract upon your tender for section 'B,' and that you cannot reasonably advance the plea that the time allowed you for making your deposit is too short. For this reason and in view of the importance of placing those works under contract with the least possible delay, the Minister regrets that he cannot grant your application for an extension of time to enable you to make your deposit.'

"That about 8 o'clock on the evening of Saturday, 1st March, a letter was received from Andrews, Jones & Co. stating: "We have deposited to the credit of the Receiver-General some \$50,000 as security on account of our tender for section "B;" and that at 4.30 p.m., on

the same day, 1st March, the following telegram was received by the Receiver-General from Toronto: 'A deposit of forty-eight thousand nine hundred and fifty dollars has been made by A. L. Thompson for your credit account, contract section 'B' Pacific Railway.

"GEO. W. YARKER,
"Manager."

On Monday, 3rd March, the following letter was received by the Receiver-General:—

"BANK OF MONTREAL,

"TORONTO, 1st March, 1879.

"SIR,—I have the honour, at the request of Mr. A. L. Thompson, to enclose herewith our deposit receipt, \$48,950, payable to your order in six months from date, without interest, and which confirms my telegram of to-day.

"Should the receipt not be used, you will please return it cancelled to me.

"I have, etc., etc.,

"GEORGE W. YARKER,
"Manager."

"The Hon. Receiver General, Ottawa."

That at 2:15 p m., 3rd March, the following telegram was received by the Receiver General:—

"A deposit of forty-eight thousand nine hundred and fifty dollars has been made by G. D. Morse for your credit account, contract section "B" Pacific Railway. Andrews, Jones & Co.

"G. W. YARKER
"Manager."

And on the 4th March, the following letter was received:

"BANK OF MONTREAL,

"TORONTO, 3rd March, 1879.

"SIR,—I have the honor at the request of Mr. G. D. Morse to enclose our deposit receipt \$48,950, which confirms my telegram of this date.

"In the event of your not using the receipt, I have to request you to return it to me.

"I have, etc., etc.,

"G. W. YARKER,
"Manager."

"The Hon. Receiver General, Ottawa."

"That another letter dated 3rd March, has been received by the Department from Andrews, Jones & Co., stating 'that a further sum of \$50,000 will be deposited to the credit of the Receiver General to-day.'

"That up to the present, 5th March, nothing further has been received from any of the parties.

"Under the circumstances the undersigned recommends that the tender of Andrews, Jones & Co. be passed over, and that the third lowest tender, that of Messrs. Fraser, Grant

& Pitblado, be accepted, on condition that they make the required 5 per cent security deposit within three days from the present time.

"Respectfully submitted,

"CHARLES TUPPER.

"Minister of Public Works."

"COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 5th March, 1879.

"On a memorandum dated 5th March, 1879, from the Hon. the Minister of Public Works, having reference to Messrs. Andrews, Jones & Co., whose tender (for \$3,915,942) on form "B" for the sixty-seven miles section of the Canadian Pacific Railway between Eagle River and Keewatin was second lowest, and recommending for the reasons mentioned in said memorandum that the tender of Andrews, Jones & Co. be passed over, and that the third lowest tender, that of Messrs. Fraser, Grant & Pitblado, be accepted on condition that they make therequired 5 per cent. security deposit within three days from the present time.

"The Committee submit the foregoing recommendation for Your Excellency's approval.

"Certified.

"W. A. HIMSWORTH,

"Clerk, Privy Council."

On the same day, March 5th, Fraser, Grant & Pitblado were notified by the following letter that the contract was awarded to them.

"OTTAWA, 5th March, 1879.

"GENTLEMEN,—I have to inform you that your tender for section "B," of the Canadian Pacific Railway has been accepted, on condition that you make the deposit required of 5 per cent. on the amount thereof by 4 o'clock p.m. on Saturday next the 8th instant.

"Yours faithfully, 1879 2 24 79

"CHARLES TUPPER.

"FRASER, GRANT & PITBLADO,

"Ottawa." Does not appear to be a valid email address or phone number

After the above Order-in-Council, and on the same day, the following communication passed between the Department and persons interested in the tender of Andrews, Jones & Co:—

(Telegram.)

"TORONTO, 5th March, 1879.

"Morse & Co. with whom I am now associated, will be ready to complete the required security deposit to morrow morning. Arrangements all made, but may not be able to forward the certificate by to-night's mail. Will this be satisfactory? Please reply to G. D. Morse.

"F. SHANLY."

"The Hon. DR. TUPPER,

"Minister of Public Works."

"OTTAWA, 5th March, 7.30 p.m., 1879.

"Council directed to-day to award section B to Messrs. Fraser, Grant & Pitblado.

"CHARLES TUPPER.

"G. D. MORSE, Esq., Toronto."

Before the contract was awarded as above mentioned, to Fraser, Grant & Pitblado, that firm had agreed to amalgamate with Manning, Shields & McDonald; Mr. Shields taking part in the negotiations on behalf of the latter firm.

It is not clear from the evidence when the understanding was first arrived at; Mr. Shields said the arrangement was made verbally immediately on the tenders being sent into the Department before "the relative figures" were known.

Mr. Manning said he was introduced to Fraser, Grant & Pitblado, and they showed their tender, but he left Ottawa before any arrangement was made.

Mr. McDonald says, he thinks the arrangement was made while "Morse & Co., were supposed to be the successful tenderers," and Mr. Fraser said it was after Col. Smith went to New York on 26th February, that he was approached by one of the firm, Mr. Shields or Mr. Manning.

At all events, on or before the first of March, it was agreed between these two firms that if the contract should be awarded on the tender of either, they would amalgamate, each firm taking a half-interest and dividing that amongst its own members in the same proportion as those on which they had been originally formed. After this arrangement Fraser, Grant & Pitblado wrote the following letter:—

"OTTAWA, 29th February, 1879.

"SIR,—We beg to inform you that should the contract for section B of the Canadian Pacific Railway be allotted to us on our tender, we are prepared to associate with us Messrs. Manning, Shields and McDonald.

"Yours respectfully,

"FRASER, GRANT & PITBLADO.

"Hon. C. TUPPER, C.B.,

"Minister of Public Works."

There was no 29th February in that year, and this date was probably intended for the 1st March, the day on which the time was up for Andrews, Jones & Co. completing their deposit.

In consequence of this arrangement, the award of the contract to Fraser, Grant & Pitblado had the effect of giving a half-interest to Manning, Shields & McDonald in case the Government was willing that the two firms should be associated.

Before this award was thus made two of the last named firm had bargained with Mr. P. G. Close, to give him conditionally an interest in the rights of Manning, Shields & McDonald. We cannot ascertain definitely on what day this understanding was first arrived at. We think it was after the 1st of March when the time given to Andrews, Jones & Co. had expired, and during the first half of the next week, while the members of the firm of Morse & Co., then at Toronto, were led to hope from the communication of Mr. Nicholson, who was at Ottawa, that they might yet get the contract on Andrews, Jones & Co.'s figures if they succeeded in making further deposits. Mr. Morse about that time was endeavoring to get Mr. Close to help him to \$10,000 of the required \$200,000. Mr. Close and he parted more than once without coming to terms, and in the intervals Mr. Close saw Mr. Shields and was negotiating with him as to an interest in the chances of his firm. This ended in Mr. Morse getting no help from that quarter, and an agreement was made between Mr. Shields and Mr. Close which was reduced to writing on the 6th March. Mr. McDonald was no party to this arrangement. The following is the agreement referred to:—

“TORONTO, March 6th, 1879.

“The undersigned becoming aware that Messrs. Morse & Co. have raised a large part of the money required to deposit as security with the Government in awarding them the contract for section B of the Pacific Railway, and as P. G. Close is one of the parties necessary to raise the balance of the security, and has agreed to withdraw from being the security for said Morse & Co., if we will give him an interest in said contract if the tender is awarded to Fraser, Grant & Pitblado and Manning & Co., and believing that it will be in the interests of all the parties with whom we are associated in said contract, that said P. G. Close shall not be security for Morse & Co., do hereby agree for ourselves and all the parties to be benefited in said contract, that in consideration of his so refusing to be security as aforesaid, that we pledge him for all the parties in the said contract that he shall have a one-twenty-fourth part in said contract if the same is awarded to Fraser & Co., or that it comes to our tender, the said Close to bear his share of the security and to do his portion of the work.

“ALEXANDER MANNING.

“JOHN SHIELDS.

“WITNESS, ALEX. JARDINE.”

About the same time that the negotiations last described were going on at Toronto, two members of the amalgamated firm, namely, Mr. Fraser and Mr. J. J. McDonald were at Ottawa, and did not feel quite certain of holding the contract under the notice from the Department of 5th March above referred to. It had become known that Morse & Co. had combined with Andrews, Jones & Co., and that \$100,000 had been deposited at Toronto by

the latter firm, part of it before the time limited had expired. Mr. Fraser and Mr. McDonald being uncertain whether this fact gave the amalgamated firm of Morse & Co. and Andrews, Jones & Co. a chance of holding the contract, provided the balance of security should be afterwards supplied by the New York branch, were anxious to prevent that, and to bring some influence to bear on Col. Smith, who was supposed to have the power in his hands of supplying it or not, as he might choose.

Mr. Chapleau, before mentioned, was understood to be an intimate friend of Col. Smith, and he had been already in communication with him on matters connected with this contract. It was accordingly arranged on 5th March, 1879, between these three—Mr. Fraser, Mr. McDonald, and Mr. Chapleau—that Mr. Chapleau should leave forthwith for New York and see Col. Smith, and if he succeeded in preventing the balance being supplied which was required to make up the deficiency in the security demanded from Andrews, Jones & Co., then he should receive from Mr. Fraser and Mr. McDonald, or one of them, the sum of \$4,000 as a compensation. Mr. Chapleau left for New York on 6th March, and on 7th March saw Col. Smith and Mr. Jones there. He used no persuasions either with them or Mr. Dillon to prevent the deposit being made. There was no opportunity to do so, for all those gentleman had already abandoned the idea of being connected with this contract. Mr. McDonald afterwards paid \$500 to Mr. Chapleau on account of this \$4,000.

Mr. Chapleau was examined at some length concerning this transaction. In the course of his examination he testified that while he was employed as a clerk in the Department then having control of the affairs of the Pacific Railway, there was an arrangement between him and a Mr. Mowbray who had business transactions with the contractors on this railway.

Mr. Mowbray was a manufacturer of explosives, and by the arrangement Mr. Chapleau was to give him information concerning contracts in which there would be rock work, for which Mr. Mowbray paid him a monthly allowance. Mr. Chapleau's recollection of the amount was "\$30 or may be \$40 per month," and that it lasted "only three or four months probably."

The award of the contract on 5th March, as aforesaid, was carried out, and the contract finally executed on the terms described at the opening of this report.

Upon the evidence we conclude that in obtaining this contract, the contractors got no undue advantage, and that at the time it was awarded there was no opportunity for the Department to secure the works at prices lower than those mentioned in it.

In May, 1879, Mr Jennings proceeded to the works as Government engineer in charge. His jurisdiction was confined to this section. Stakes planted in the ground then indicated the centre line and the cross-sections over the location. The contractors were not hindered for want of work being laid out for them. Mr. Grant, one of the contractors, was on the ground at the time Mr. Jennings arrived.

Mr. Fleming, then Chief Engineer, directed his attention to the improvement of the line over this section so successfully, that in carrying out the directions given by him, and continuing the efforts which he originated, there will be a very large saving in its cost, much of it without lowering the character of the work; some of it by using trestle work in places instead of solid embankments, and otherwise changing the character in localities so as to make the line there no less useful for present purposes, but less lasting than was at first intended. The gradients have been made less steep than by the original plans and specifications.

The whole saving from these changes was, in the fall of 1880, estimated by Mr. Jennings to reach \$1,500,000, but he said it would take \$500,000 of this to fill in trestle work, which had been substituted for the earth embankments at first designed.

Mr. Schreiber, Chief Engineer, visited the work in December, 1879; he found the force at work too small, and the work on that account was not proceeding satisfactorily; but what was being done was of good character, and there was no ground for complaint on that score. It was owing to this delay that trestle was adopted in places so that the passage of trains, within the time specified, might not be prevented. According to his opinion nearly half the saving above mentioned will be by improvements in location and without lessening the permanency or efficiency of the work, the residue will be by making some of the work less permanent than was at first proposed, but equally useful for present purposes.

Mr. Schreiber testifies that the whole saving over this section is due to efforts made, and directions given, by Mr. Fleming while Engineer-in-Chief.

Up to the 30th June, 1880, the expenditure under this contract was \$429,300.

CONTRACT No. 43.

Equipping and working Pembina Branch.

By this indenture, dated 12th March, 1879, Joseph Upper, James Swift, B. W. Folger, and M. H. Folger, covenanted that before the 30th April, 1879, they would thoroughly equip the Pembina Branch of the railway, and as soon as a certain privilege therein referred to as being possessed by one George Stephen for running trains over the said line should be terminated, they would work the said line according to the terms specified in a certain agreement with this said George Stephen, subject to conditions and provisions set out in the said indenture, receiving therefor the gross earnings of the said line, except 25 per cent thereof or such other sum as should be fixed by arbitration as therein provided for, which 25 per cent. or other sum was to be paid to the Government. By this contract it was also agreed, that upon its termination the rolling stock of the contractors should be assumed by the Government, on terms and conditions therein stated.

The service provided for by this contract was not let by public competition, it was agreed for by accepting an offer made by one of the contractors as hereinafter mentioned.

On the 3rd August, 1878, an agreement had been entered into between Her Majesty of the one part and George Stephen of the other part, having for its main objects, first, a connection at the international boundary between the Pembina Branch and an extension of the St. Paul and Pacific Railway, and, second, after such connection should be made that trains might be run by the said Stephen over the said Branch, on terms therein specified, with a clause that should the said Branch be equipped, Her Majesty might terminate the right of the said Stephen to run such trains as aforesaid, and with a further clause regulating traffic as therein specified over the said Branch and the said St. Paul and Pacific Railway.

On 27th February, 1879, Mr. Joseph Upper, one of the contractors under contract No. 33, made the following proposal :—

“OTTAWA, 27th February, 1879.

“Hon. C. TUPPER, Esq. C B.,

“Minister of Public Works.

“SIR,—I have the honour to submit the following offer for the working of the Pembina Branch of the Canadian Pacific Railway :—

“1. I will equip and work the said line as the assignee of the Government under the lease or agreement entered into between the Canadian Government and George Stephen, dated August 3rd, 1878.

"2. I will thoroughly equip the said line with all the necessary rolling stock on or before the 31st day of March next, and I will thereafter efficiently work the same for a term of five years.

"3. I will pay over to the Government 25 per cent. of the gross earnings of said line or such other sum as may be fixed upon by arbitration as provided for in the lease or agreement before mentioned.

"4. Should I at any time fail to efficiently work the said line, or if for any reasons of State the Government desire to resume possession of said line, the Government will at once have the power to cancel this agreement by taking over the rolling stock and other plant at a fair valuation.

"5. At the expiration of five years should we fail to agree upon terms for the continuance of the agreement to work the said line the Government are to take off my hands all the rolling stock and plant at a fair valuation.

"Should the Government favourably consider this offer, I will furnish satisfactory security for the due fulfilment of the terms of the agreement, and beg to refer you to the following gentlemen named below.

"I have the honour to be, Sir,

"Your obedient servant,

"JOSEPH UPPER.

"Messrs. Calvin & Breck, Kingston,

"Folger Bros. "

James Swift, Esq. "

Thomas Howard, Esq., Montreal."

This letter having been, at the instance of the Minister of Public Works, referred to the Chief Engineer, he made the following report:—

"CANADIAN PACIFIC RAILWAY,

"OFFICE OF THE ENGINEER-IN-CHIEF,

"OTTAWA, March 3rd, 1879.

"Sir,—The offer of Joseph Upper, dated 25th February, 1879, to work the Pembina Branch, has been referred to me for report.

"Joseph Upper is one of the contractors for ballasting the Pembina Branch. In the public interests it is important that while ballasting goes on, construction and traffic trains should be worked by the same authority. It will be an advantage, therefore, to have a traffic arrangement with the ballast contractors, on terms not less favourable than can be made with others.

"I think the proposal is an acceptable one; but I would suggest that the contract should be only until the line is open from Selkirk to Fort William, unless terminated at a shorter period. I would suggest also that the rates to be charged for passage or freight should not exceed the average rates in the adjoining State of Minnesota, and be subject to the approval of the Governor in Council.

"SANDFORD FLEMING,

"*Engineer in-Chief.*

"The Honourable

"The Minister of Public Works."

Negotiations having led to the associations of the other persons named in this contract with Mr. Upper who alone had made the offer, an agreement was arrived at and reduced to writing, dated the 12th March, 1879, which is the contract now under consideration.

This agreement, subject to amendment, was confirmed by the following Order-in-Council :—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 13th March, 1879.

"On a memorandum dated March 13th, 1879, from the Honourable the Minister of Public Works, stating that in view of the great importance of opening immediate communication by rail between St. Vincent and Winnipeg, and the difficulties inseparable from the operating of the line by any other party than the contractor for its construction, he has entered into negotiations with the contractor, Mr. Joseph Upper, from whom an offer was received for the equipment and working of the Pembina Branch Railway in lieu of the Government, under agreement dated 3rd August, 1878, entered into with George Stephen, who represented the controlling interest in the St. Paul and Pacific Railway Company.

"The Minister observes that after negotiation with Mr. Upper and Messrs. James Swift, B. W. Folger and M. H. Folger, the gentlemen associated with him, the agreement produced herewith dated 12th March, 1879, made between Her Majesty of the first part, and the four gentlemen above named of the second part, and signed by those four gentlemen, was come to.

"The Minister therefore recommends that authority be given to the Department of Public Works to execute the said agreement on behalf of Her Majesty, provided a clause (which was agreed upon and omitted by oversight) be added to the effect that the Government is to be indemnified against any claim which the contractors may have or make in any way against the Government by reason of interference with their work or otherwise, on account of the equipment and working of the line under this agreement.

"The Committee advise that authority be granted as requested.

"W. B. HILMSWORTH,

"Clerk, Privy Council."

The reasons for entering into a contract in this case as set out in the reports of the Chief Engineer, and in the memorandum submitted to the Privy Council as aforesaid, show that this was not a case for competition.

After the contract was closed, the contractors failed to carry out their bargain, and it was decided to cancel the arrangement. The Order-in-Council which authorized this step gives the reasons for it as follows :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 26th January, 1880.

"On a report dated 23rd January, 1880, from the hon. the Minister of Railways and Canals, stating that Messrs. Joseph Upper & Co., on the 12th March, 1879, entered into an agreement to thoroughly equip with all necessary rolling stock and other things required for

the efficient working of the Pembina Branch of the Canadian Pacific Railway, to maintain and keep it in an efficient and full state of repair, and to efficiently work it until the Canadian Pacific Railway from Thunder Bay to Selkirk was opened for traffic, unless this agreement be sooner terminated.

"That they never have thoroughly equipped it with the necessary rolling stock and other things for its efficient working, have not efficiently worked it, and in no respect have they fulfilled the terms of the agreement, and that the public have made repeated complaints of the unsatisfactory manner in which it was worked, that in consequence, so long ago as the 29th September, 1879, he, the Minister, notified them by telegraph that he feared he would be compelled to take the operating of the Branch out of their hands.

"That under date the 23rd December ultimo and the 22nd January instant, the Chief Engineer of Government Railways in operation reports, that the said Pembina Branch is not thoroughly equipped with the necessary rolling stock and other things necessary for the efficient working thereof, and that the said Branch is not being efficiently worked, and that in consequence the completion of the works of construction on the Canadian Pacific Railway between Winnipeg and Fort William, and also west of Winnipeg, will be greatly retarded and delayed, unless prompt measures are taken to control the traffic and ensure its prompt despatch.

"The Minister therefore recommends that he be authorized, under the terms of the agreement of the 12th March, 1879, to terminate the said agreement on and after the 10th day of February next, and assume control of the operating of said Branch.

"The Committee submit the foregoing recommendation for your Excellency's approval.

"Certified.

"(Signed) J. O. COTÉ,

"Clerk Privy Council.

The following Order in Council speaks for itself :—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 16th March, 1880.

"On a report, dated 13th March, 1880, from the Honourable the Minister of Railways and Canals, stating that under the authority given by an Order in Council, of the 26th January last, the agreement made with Messrs. Joseph Upper & Co. for the equipment and working of the Pembina Branch Railway was terminated on the 10th February ;

"That under the terms of clause 14 of the contract with Messrs. Upper & Co., the Government is obliged to take the rolling stock from the contractor at a valuation ;

"That a valuation was accordingly made by the Chief Superintendent and the Locomotive Superintendent, and that a telegram was received from the former on the 21st February, in which he estimated the value of the rolling stock at \$70,000, the valuation of the plant not being then completed ;

"That upon the advice of the Engineer-in-Chief, he, the Minister, authorized the payment to the contractors of the sum of \$25,000 on account, which sum was paid on the 21st ultimo ;

"He now recommends that he be confirmed in the action taken in making such payment, and further that authority be given for the payment of an additional sum of \$25,000, pending a final settlement with Joseph Upper & Co.

"The committee submit the foregoing recommendation for Your Excellency's approval.

"Certified.

"(Signed) J. O. COTE,
"Clerk Privy Council.

The expenditure made on this contract up to 30th June, 1880, included the two items of \$25,000 each mentioned in the last named Order in Council, in all \$50,000.

CONTRACT NO. 41.

Steel Rails.

By the agreement in this case the West Cumberland Iron and Steel Company (limited) undertook to supply 2,000 tons of steel rails, to be delivered at Montreal, according to specification, at the rate of £4 19s. sterling per ton.

This was one of a series of contracts entered into between the Government on the one part, and manufacturers in England on the other part, through the intervention of Messrs. Stevens & Reynolds, of London, England. On the 7th June, 1879, Mr. Fleming, the Chief Engineer, addressed the Minister of Public Works as follows :—

"OTTAWA, 7th June, 1879.

"SIR,—I beg to draw your attention to the fact that it will be necessary at once to provide for the supply of rails for those portions of the line under construction, and also for those immediately to be put under contract.

"There are on hand, lying at Fort William, 48 miles of rails over and above the length wanted to lay the main track on contracts 14, 15 and 25.

"The contracts recently entered into, 41 and 42, will require for main track 185 miles, of which 48 miles are provided as above, leaving to be provided 137 miles.

"To which should be added the length of line west of Selkirk, with branch to Winnipeg purposed immediately to be built, say 110 miles; also allowance for sidings and spare track on the whole line from Fort William to Selkirk and extension west of Selkirk, say 30 miles.

"Total required for these services, 277 miles, equal to, say 25,000 tons.

"In addition to which the Georgian Bay Branch, contracted to be finished 1st July, 1880, will, if carried out, require nearly 5,000 more. In all, 30,000 tons to be provided.

"I will accordingly recommend that all the rails required, with a sufficient quantity of fastenings, should at once be contracted for, to be delivered at Montreal by each of the following dates, viz.:—

"One-third by 1st October, 1879.

"One-third by 1st June, 1880.

"One-third by 1st October, 1880.

"I have the honour to be, Sir,

"Your obedient servant,

(Signed) "SANDFORD FLEMING,

Engineer in-Chief.

"The Hon.

"Sir CHARLES TUPPER, K.C.M.G.,

"Minister of Public Works."

On the 17th June Mr. Fleming, under the direction of the Minister telegraphed to Mr. Reynolds, at London, as follows:—

"When, and for what price could 5,000 tons Sandberg's specific standard be delivered in Montreal.

On the day following, Mr. Reynolds answered by cable:—

"End of next month and August; five pounds sterling; if advised immediately, probably better."

On the 19th June Mr. Fleming cabled to Mr. Reynolds as follows:—

"Receive tenders; 5,000 tons delivered Montreal before 15th August. Cable number tenders and lowest. Rails and fastenings must be specific standard."

On the 21st June, a cablegram to Mr. Fleming from Mr. Reynolds was received to the following effect:—

"Eleven. Lowest delivered c. f. i. Montreal, fifteenth August, five for reply by cable. Shall I inspect?"

On the 21st June Mr. Fleming answered by cable as follows:—

"Order rails and fastenings. Furnish Sandberg's template. Oversees inspection."

On the 19th June, the day on which Mr. Fleming sent the directions, Messrs. Stevens and Reynolds addressed the following circular to the parties named below it:—

"LONDON, 19th June, 1879.

"GENTLEMEN,—Please quote us your lowest price, c. i. f. Montreal, for 5,000 tons steel rails 57½ lbs. per yard with necessary fish plates to enclose section, to be delivered at Montreal by the 15th August next. Should you be unable to deliver the whole quantity by date specified, please quote for such portion as you can guarantee to deliver by the time named, and if

unwilling to deliver at Montreal, kindly let us have your price for delivery f. o. b. Rails will be inspected during manufacture.

"Payments net cash, no commissions being required.

"We are, gentleman,

"Yours truly,

"STEVENS & REYNOLDS."

This circular was addressed to the following parties :—

Guest & Co.,	Ebbw Vale Co.,
Boleckow, Vaughan & Co.,	Barrow Hæmatite Co.,
Charles Cammell & Co.,	West Cumberland Co.,
John Brown & Co.,	Moss Bay Co.,
Rhymeny Iron Co.,	Wilson, Cammell & Co.,
Brown, Bayley & Dickson.	

The method of competition adopted in this case was decided upon after discussion between the Chief Engineer and the Minister.

Mr. Reynolds, who took part in the transactions and gave evidence upon the subject before us, stated that he considered it was adapted under the circumstances to bring out as low prices as by public advertisement; that sometimes the market is stiffened by public notice of anything like a large quantity being required.

Four of the parties addressed declined to make any offer; the answers from the others contained two offers free on board at Liverpool, one at £5, and the other at £5 5s. sterling per ton, and the offers for delivery at Montreal, which latter ranked in the following order :—

West Cumberland Co.....	2,000 tons at	£4 19s. 0d. sterling.
Barrow Hæmatite Co.....	5,000	" 5 0 0 "
Ebbw Vale Co.....	1,500	" 5 0 0 "
Boleckow, Vaughan & Co	2,500	" 5 0 0 "
Guest & Co.....	2,500	" 5 2 6 "

The following parties who had been addressed as aforesaid declined to compete :—

The Atlas Steel and Iron Works.
 The Moss Bay Co.
 The Rhymeny Iron Co.
 Wilson, Cammell & Co.

It will be seen that in this competition the West Cumberland Co made the lowest offer, namely, £4 19s. sterling.

On the 24th June, 1879, Messrs. Stevens & Reynolds wrote accepting their offer in full.

All the correspondence concerning this transaction by Mr. Reynolds accompanied his report upon the subject to the Department. His action was confirmed and approved of, and there has been no expression of dissatisfaction by the Minister concerning it. In our judgment the action of the Department secured by this contract, at the lowest possible price, the material bargained for.

The quantity of rails agreed for was delivered, and the amount expended was:—

To 30th June, 1880 \$50,064 74

CONTRACT NO. 45.

Steel Rails.

By this agreement the Barrow Hæmatite Steel Co. undertook to supply 1,500 tons of steel rails with the proportionate quantity of fish-plates, at Montreal, according to specification, at the rate of £5 sterling per ton.

The supply of rails under this contract was submitted to competition in the manner described in our report upon contract No. 44. As shown there, the offers resulted in five for delivery at Montreal, of which the lowest was the one made by the West Cumberland Co., and became the foundation for contract No. 44. There were three other parties who named the price next above that, namely, £5 sterling per ton. Of these the Barrow Hæmatite Co. was one. The offer of this company was for the whole quantity but in order to ensure as early a delivery as possible, it was decided by Messrs. Stevens & Reynolds to divide the 3,000 tons left after ordering the quantity tendered for by the West Cumberland Co. into two orders. They accordingly wrote on the 25th June, 1879, to the Barrow Hæmatite Co. stating that "as the time for delivery is short we have decided to divide the order for the 5,000 tons of steel rails and fish-plates which you quoted us for on the 20th, and we this morning telegraphed you, to which we have just received your answer. We have now pleasure in giving you order for 1,500 tons of the rails with the necessary steel fish-plates delivered at Montreal by the 15th August, at the price of £5 per ton, c.i.f., at Montreal."

In our judgment the action of the Department secured by this contract, at the lowest possible price, the material bargained for.

This contract was carried out, and the expenditure under it, up to the 30th June, 1880, was \$37,844.59.

CONTRACT No. 46.

Steel Rails.

By this agreement the Ebbw Vale Steel, Iron and Coal Co. undertook to supply at Montreal 1500 tons steel rails, with the proportionate quantity of fish-plates, according to specification, at the price of £5 sterling per ton.

The supply of rails under this contract was submitted to competition in the manner described in our report upon contract No. 44. As shown there, the offers resulted in five for delivery at Montreal, of which the lowest was the one made by the West Cumberland Co., and became the foundation for contract No. 44. There were three other parties who named the price next above that, namely £5 sterling per ton. Of these three the Ebbw Vale Co. was one. The offer of this Company was for 1500 tons, which, with the amounts already ordered under contracts Nos. 44 and 45, completed the quantity required by the Department.

On the 26th June, 1879 Messrs. Stevens and Reynolds wrote to these contractors giving the order for the amount offered by them at the price named, £5 sterling per ton.

In our judgment the action of the Department secured by this contract, at the lowest possible price the materials bargained for.

The quantity has been supplied and the contract fulfilled.

The money paid under it up to the 30th June, 1880 was \$37,972.28.

CONTRACT No. 47.

Bolts and Nuts.

By this agreement the Patent Bolt and Nut Company agreed to supply free on board at Newport, England, 96,000 fish-plate bolts and nuts according to specifications, at £10 sterling per ton.

The supply under this contract was the result of competition brought about in the same way as described in our report on contract No. 44.

Messrs. Stevens & Reynolds, on the 2nd July, 1879, addressed a circular to the Patent Bolt & Nut Co, Baylis, Jones & Baylis, and Horton & Son, English manufacturers. This circular was as follows:—

"DEAR SIR,—Please quote us your lowest price for 96,000 fish-bolts and nuts $\frac{3}{4}$ inches diam., $3\frac{1}{4}$ long, cap head and square neck, and nut oiled and packed in strong 2 cwt. iron, bound cases, and delivered f. o. b. Newport. Terms of payment will be net cash on shipment, no commission being required; delivery to be made within three weeks of this day."

The offers were as follows:—

Patent Bolt and Nut Co.....	£10 stg. per ton.
Horton & Son.....	10 2s. 6d. "
Baylis, Jones & Baylis.....	10 5s. 0d. "

Unless the packages should contain 4 cwt. each instead of 2 cwt. as was mentioned in the circular: in that case the offer of the last named firm was £10 stg.

On the 4th July, 1879, Messrs. Stevens & Reynolds wrote accepting the offer of the Patent Bolt and Nut Co. as above mentioned.

Upon the evidence we conclude that there was no more favourable opportunity than that afforded by this contract, by which the Department could provide the articles bargained for.

The contract has been fulfilled and the following amount paid under it up to the 30th June, 1880: \$2,277.60.

On the 2nd December, the following letter was written by the Secretary of the Department to the Engineer-in-Chief concerning the last four contracts:—

"OTTAWA, December 2nd, 1879.

"SIR,—Referring to the communication received from your office under date 9th September, last, in relation to the contracts entered into for the supply of 5,000 tons of rails and fastenings required for the construction of the 100 miles of the Canadian Pacific Railway extending west from Winnipeg, I am directed to inform you that the Minister has approved of the purchase, and that you are hereby authorized to grant a certificate for the value of the rails, etc., delivered under such contracts.

"I am, Sir,

"Your obedient servant,

(Signed.) "F. BRAUN,

"Secretary.

"SANDFORD FLEMING, Esq., C.M.G.,

"Engineer-in-Chief Canadian Pacific Railway."

CONTRACT No. 48.

Railway Construction.

By this contract, dated 19th August, 1879, John Ryan covenanted to complete, according to specifications all the excavation, grading, bridging, track-laying, ballasting, station buildings and other works required to be done on that portion of the railway commencing at Winnipeg and extending 100 miles or any shorter distance north-westerly or westerly, that the Minister of Railways might determine, the whole to be completed before the 19th August, 1880, and fifty miles of it within eight months after the date of the contract; the agreement also covered the carriage of rails and fastenings from Montreal; receiving, therefor, the prices named in the said contract as applying respectively to the different classes of work there enumerated.

On the 16th June, 1879, advertisements were issued asking for tenders up to noon of Friday, 1st August following, for the construction of about 100 miles of railway west of Red River, and it was stated that printed forms and other information might be had at the office of the Engineer at Ottawa, or in Winnipeg.

On the afternoon of the day above named for receiving the tenders, they were opened in the presence of Mr. Trudeau, the Deputy Minister, Mr. Smellie, acting in the place of the Engineer-in-Chief, and Mr. Burpe, a clerk in the Department.

There were thirty-nine in all, varying from \$553,060 to \$994,550, the lowest being made by W. C. Hall, and the one next above him by Mr. John Ryan, the present contractor, whose offer was \$600,500.

In this case it was provided in the specifications furnished to tenderers, that a portion of the work mentioned in the bill of works, might be withdrawn if the Government thought proper, and in this instance, before entering into any bargain it was decided that the fencing on this portion of the line, and half of the ballasting should be omitted from the works to be placed under contract. The prices named in the tenders for these items were deducted from the whole prices named by each offer. The result of such deduction was not to alter the rank of either the lower tender made by Mr. Hall, or the next one by Mr. Ryan, as compared with any of the others.

A report by Mr. Smellie, of the 8th August, 1879, to the Acting Minister of the Department, contains the following:—

“You will also observe that by these deductions some of the tenders take a different place from what they would do if the amounts of the tenders, as sent in, were compared. Numbers 1 and 2 on the list are not thus affected. The lowest tender is that of Mr. W. C. Hall, of Three Rivers, amounting, after the above deductions, to \$486,810, or \$4,868 per mile. Generally the prices in this tender are very low, especially in the items of carrying of rails and fastenings from Montreal, and supply of ties. I have had an interview with Mr. Hall, who has been summoned here in connection with this tender, and find that he can afford very little information as to the basis upon which the prices were fixed, some other parties whom he names having taken an active part in the same.

“Mr. Hall states that he has been for some years engaged upon railway works, and is at present foreman of track-laying and ballasting on the piles branch of the Quebec Government Railways, under Mr. McGreevy. I have no personal knowledge of Mr. Hall, but have communicated with the engineer of the Government Railways at Quebec, as to whether he knew anything of Mr. Hall's abilities or resources, and he replied by saying that he has never heard of him.

“Taking all these matters into consideration, I am of opinion that Mr. Hall has neither the ability, skill, nor resources for carrying on this extensive work, and do not think it expedient that the Government should award him the contract.”

On the 8th August, 1879, Mr. Hall addressed the following letter to the Minister:—

“This being the first time that I tendered for any public works, I was not aware that I would have to be ready with a deposit at once, and having partners in the matter, although not appearing on the tender, and not being able to get them here for a short time, and being informed that there is an alteration in the specification, I decline to accept the work, and hope you will take me favourably into consideration and not compel me to forfeit the deposit already made.

“I remain,

“Your obedient servant,

“W. C. HALL.

Mr. Hall in this letter speaks of the necessity of being ready with a deposit at once. Mr. Trudeau, who as well as Mr. Smellie had seen him, and had conversed on this subject, testified that this language is not in accordance with the intimation which was given to him at the time; that he was given to understand that a reasonable period would be allowed for furnishing the deposit if it was required.

Mr. Ryan has also been examined in order to ascertain whether he took any part in procuring the withdrawal of Mr. Hall, and we have come to the conclusion that Mr. Hall was not able to undertake the contract himself, and that his declining to do so was not in any way attributable to inter-

ference by Mr. Ryan, or any improper pressure by anyone connected with the Department.

On the 9th August the contract was awarded by the following letter :—

“9th August, 1879.

SIR,—I am directed by the Acting Minister of Railways and Canals to inform you that your tender for the construction of 100 miles of the Canadian Pacific Railway, extending westward from Winnipeg, is the present lowest before the Department. I am, accordingly, to request you to state whether you are prepared to enter into a contract and deposit the necessary security, say \$20,000.

“I am, Sir,

“Your obedient servant,

“F. H. ENNIS,

“Acting Secretary.

“JOHN RYAN, Esq., Ottawa.”

On the day before this award of the contract to Mr. Ryan, the Acting Minister of Railways had submitted a memorandum concerning the transaction to the Privy Council, and it was followed on the 12th August by an Order in Council, directing that the cheque enclosed by Mr. Hall with his tender should be returned to him.

On the 18th August, 1879, the Acting Minister of Railways and Canals submitted a memorandum concerning the substance of the tenders, and the withdrawal of Mr. Hall, which was followed on the 22nd August, 1879, by the following Order in Council :—

“COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 22nd August, 1879.

“On a report dated 18th August, 1879, from the Hon. J. H. Pope, acting in the absence of the Minister of Railways and Canals, stating that thirty-nine tenders have been received (1st August, 1879) for the grading, track-laying and ballasting of 100 miles of the Canadian Pacific Railway west from Winnipeg, such tenders ranging from \$553,060 to \$994,550.

“That the lowest tender is that of Mr. W. C. Hall, of Three Rivers, who offers to do the work at rates which, when extended, amount to \$553,050.

“That Mr. Hall was notified on Monday, the 4th, and came to Ottawa on the 7th instant.

“That one of the conditions of the specification upon which these tenders were based requires that the contractor shall deposit with the Government, money or its equivalent value at current rates of public securities or bank stock, to the amount of five per cent. of the bulk sum of the contract.

“That Mr. Hall, by a letter dated the 8th inst., has declared his inability to comply with this condition, and has verbally stated that his financial means were limited to eight or ten thousand dollars.

“That the engineer in charge of the works has reported that, in his opinion, Mr. Hall could not perform the work for the prices named in his tender; and further, that from his

own statement he has neither the financial means or ability to execute the works within the time specified.

"That the next lowest tender received is from Mr. John Ryan, whose prices, when extended, give a bulk sum of \$600,500.

"That Mr Ryan has declared his readiness to proceed with the works, and has duly deposited the sum of \$29,000 as security.

"The Minister recommends that the work be entrusted to Mr. John Ryan at the prices named in his tender.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified.

"W. A. HIMSWORTH,

"*Clerk, Privy Council.*"

The requisite security having been deposited by Mr. Ryan on the 28th August, 1879, the contract was entered into as described at the opening of this report.

From the evidence we conclude that by the award of this contract the contractor obtained no undue advantage, and that the action of the Department secured the work at the lowest available offer.

Construction under the contract was not begun for a considerable period after its execution. Mr. Ryan, giving evidence before us, stated that the line was not located until May, 1880, so that work could be done upon it, but that no delay had occurred through his omissions after the line had been sufficiently located to enable him to proceed. There were two lines at first projected from the main one, one called the fourth base line, and the other some four miles north of that. The northerly one was finally adopted.

The work has progressed under this contract very slowly. With the consent of the engineers, a material change was made in the formation of the road-bed: instead of putting earth from side ditches into that, the ties were, over a considerable distance, laid upon the surface of the ground and ballast hauled and deposited between them, after which, the ties being lifted, a bed was formed of ballast instead of earth as was at first designed, ditches being omitted except when they are required for drainage. It is claimed by the contractor that this will make better work than that mentioned in the specifications. The width of the bed will not be so great. The cost, as a whole, will be somewhat higher. This change was made under the direction of Mr. Schreiber, the Chief Engineer, in 1880. By this means the ballasting under the contract will be largely increased, and the excavation of earth very much diminished. It is obvious that this

change in the character of the work, cannot be said in any way to be a breach of the contract by Mr. Ryan.

At the time of our taking evidence in Winnipeg (October, 1880) the trains were running for construction purposes over about forty miles of the line covered by this contract.

The transportation from Montreal of the rails, for the whole length, had taken place, and the cost thereof, a disbursement on behalf of the contractor, appears as a charge against this contract.

The expenditure up to the 30th June, 1880, was \$153,800.

CONTRACT No. 49.

Station Houses.

By this contract, dated the 15th August, 1879, Richard Dickson covenanted to erect and complete combined passenger and freight buildings, to be used in connection with the Pembina Branch, at several different places named in the contract, and at prices stated as applicable respectively to such places, the whole amounting, according to the contract, to \$15,802.40.

This work was let by public competition. The buildings to be erected were for the stations at Emerson, Penza, Otterburn, Niverville, St. Boniface and Selkirk. At other stopping places platforms only were required, namely, Arnaud, Dufrost, St. Norbert and Gonor.

Advertisements were issued on the 17th of June, 1879, for the receipt of tenders up to 15th July following, on which day those received were duly opened by officials of the Department, and they showed offers varying in price according to requirements at the different places, the totals ranging from \$15,802.40 up to \$43,000. The respective prices and names are set out at pages 30 and 32 of a Return to House of Commons. dated 31st March, 1880. The correspondence on the subject in the possession of the Department is there given. Mr. Dickson, the contractor in this case, made the lowest and the contract was awarded to him.

In our judgment, the action of the Department secured the work contracted for, at the lowest available offer and the contractor got no undue advantage in the bargain.

There has been no difference between the contractor and the Government officials concerning the subject of the contract. The work was finished and taken off his hands without dispute.

The total amount expended up to the 30th June, 1880, was \$13,050.

CONTRACT NO. 50.

Railway Spikes.

By this contract, dated 4th September, 1879, George Angus Miller, Charles Herbert Miller and James Mitchell, under the firm of Miller Bros. & Mitchell, bound themselves to manufacture and supply 400 tons of railway spikes according to specifications, to be delivered at Fort William, and 300 tons at Montreal, receiving therefor, per ton of 2,240 lbs., the price of \$52.75 for those delivered at Fort William and \$47.75 for those delivered at Montreal, deliveries to be at the times mentioned in the contract.

On the 30th July, 1879, advertisements were issued, asking for tenders of the 20th August following, for the supply of 35 tons of fish-plate bolts and nuts, and 700 tons railway spikes, specifications and other information to be had at the Engineer's Office in Ottawa. The tenders, which were received in due time, were opened on the 20th of August by officials of the Department.

Eight offers had been made, varying from \$52.75 per ton, at Fort William, and \$47.75 at Montreal, to \$65 at Fort William and \$120 at Montreal. The lowest offer was made by Miller Bros. & Mitchell, the present contractors.

On the 23rd August, Mr. Ennis, of the Department, wrote to this firm asking if they were prepared to supply and deliver 400 tons at Fort William and 300 tons at Montreal at the prices named in their tender, and if so, to deposit security equal to 5 per cent.

In answer to this, Miller Bros. & Mitchell telegraphed on the 25th August to Mr. Ennis, asking: "Is it absolutely necessary that spikes must be delivered at dates in tender?" To which a reply was sent by telegraph in the affirmative.

On the 27th August Miller Bros. & Mitchell telegraphed to Mr. Ennis that they would remit their deposit that evening, and this was done accordingly.

In our judgment the action of the Department secured the materials here contracted for at the lowest available offer, and in the bargain the contractors got no undue advantage.

On the 25th August Mr. Tandy, of Moncton, was instructed by the Department to proceed to Montreal, and inspect the iron in process of manufacture by these contractors, and to report upon it as well as the facilities for manufacturing it possessed by that firm, and their capability of executing the contract within the time specified.

On the 3d September, 1769, Mr. Tandy reported that he had examined and tested the quality of iron being used by these contractors, and had submitted the spikes to various tests, finding the quality satisfactory, and equal to the test mentioned in the specifications; also, that the facilities of the manufacturers for completing the contract in the time called for were ample.

The contract has been duly fulfilled, the expenditure under it up to the 30th June, 1830, being \$35,425.

CONTRACT No. 51.

Bolts and Nuts,

By this contract, dated 8th September, 1879, the Dominion Bolt and Nut Company bound themselves to manufacture and supply thirty-five tons of fish-plates, bolts and nuts, according to specifications, to be delivered at Fort William, for the price of \$75 per ton of 2,240 pounds.

On the 30th July, 1879, the advertisement described in our report on contract No. 50, asked for the articles covered by this contract, as well as for spikes mentioned in that one.

The tenders which had been received in due time, were opened on the 20th day of August by officials of the Department.

Five offers had been made varying from \$75 to \$85 per ton. The lowest was made by these contractors.

On the 23rd August 1879, Mr. Ennis, of the Department, enquired of the Dominion Bolt Company whether they were prepared to furnish the thirty-five tons as tendered for, and if so, to deposit security equal to 5 per cent.

On the 25th August, Mr. Livingstone, acting for the Dominion Bolt Company, wrote to the Minister accepting the contract, and security was duly provided.

The evidence leads us to conclude that in this case the Department secured the materials bargained for at the lowest available offer, and without giving the contractors any undue advantage.

On the 5th September, 1879, Mr. Tandy, named in our report on the last contract, was instructed to make such examination as would enable him to report to the Department on the quality of the iron proposed to be used by these manufacturers, and the facilities possessed by them for completing the contract within the time specified.

On the 17th September, 1879, Mr. Tandy reported that he had visited the works of these contractors in Toronto, and that the iron used was of first-rate quality, in every way equal to the specifications, and that the manufacturers had all the facilities requisite to complete the contract in the time called for by specification.

The contract was performed. The expenditure under it was—

To 30th June, 1880 \$2,662 50

CONTRACT NO. 52.

Transportation of Rails.

This contract is not included in any single document. It is contained in correspondence between the Department and the contractors. By the agreement the North-West Transportation Company agreed to transport 5,000 tons of rails, more or less, from the ocean steamer's tackle at Montreal to Fort William, at the rate of \$6 per ton of 2,240 lbs.

This contract was let upon competition invited by circulars addressed to eight different parties, asking for offers to forward 5,000 tons of steel rails and fastenings, from Montreal to Fort William. Only four out of the eight replied to the invitation. All the tenders were at about the same figure, namely, \$5 per ton. Two at that rate were made respectively by Messrs. Smith & Keighley and Mr. Henry Beatty. Two others were made respectively by Messrs. Calvin & Breck and Messrs. Folger & Bros. at \$5.75. The two former, however, included the Montreal harbour dues, and the two latter did not. It was found that the harbour dues amounted to 28 cents, which had the effect of making the two offers last mentioned including the harbour dues \$6.03.

The result of this competition was reported by Mr. Fleming on the 24th September, 1879. In his report, addressed to the Minister, he states :—

“It is important that no time should be lost in completing arrangements. I beg, therefore, you will give instructions as to the offer to be selected.”

On the 29th September, 1879, Messrs. Smith & Keighley, who had made one of the two lowest tenders, telegraphed to the Minister as follows :—

“If you favour us with contract for transport steel rails and fastenings, Montreal to Fort William, kindly make contract to Henry Beatty, as he has made arrangements with Grand Trunk for prompt transport, and we to carry half quantity. Will this be agreeable to you.”

On the 30th September, 1879, the following letter awarded the contract to the North-West Transportation Company :—

“OTTAWA, 30th September, 1879.

“SIR,—I am directed by the Minister of Railways and Canals to inform you that the offer contained in your letter of the 3rd instant, for the transport of steel rails from Montreal to Fort William at the rate of six (6) dollars per ton, is accepted, the quantity requiring transport being four thousand tons. This rate to include harbour dues, canal tolls, insurance to the value of twenty-five dollars (\$25.00) per ton, and piling at the point of delivery, the rails being received by you at the ship's tackle.

“I am, &c., etc.,

“F. BRAUN,

“Secretary.

“HENRY BEATTY, Esq.,

“Manager N. W. T. Co.,

“Montreal.”

The evidence leads us to conclude that in this instance the Department secured the work covered by the contract, at the lowest available offer, and without giving the contractors any undue advantage.

Mr. Trudeau, the Deputy Minister, states that this work has been performed and paid for without dispute.

The amount expended on this contract up to the 30th June, 1880, was \$15,084.

CONTRACTS 53, 54 AND 55.

Steel Rails, Plates, Bolts and Nuts.

These contracts cover the purchase of 45,000 tons of steel rails, with the proportionate quantities of fish-plates, bolts and nuts, from the following parties :—

	Tons of rails.
The Barrow Hæmatite Co.....	30,000
Guest & Co.....	10,000
The West Cumberland Co.....	5,000

In each case the contract included the accessories; the prices of the articles varying according to the dates of delivery. Further particulars of each contract are hereinafter given in detail.

Out of this quantity 11,000 tons were bought for relaying the Rivière du Loup section of the Intercolonial Railway, and 34,000 tons for the Pacific Railway. The need of 30,000 tons of the latter quantity was stated in a report from the Chief Engineer on 7th June, 1879, as follows:—

“ OTTAWA, 7th June, 1879.

“ SIR,—I beg to draw your attention to the fact that it will be necessary at once to provide for the supply of rails for those portions of the line under construction, and also for those immediately to be put under contract.

“ There are on hand, lying at Fort William, 48 miles of rails, over and above the length wanted to lay the main track on contracts 14, 15 & 25.

	Miles.
“ The contracts recently entered into, 41 and 42, will require for main track 185 miles, of which 48 miles are provided, as above, leaving to be provided.....	137
“ To which should be added the length of line west of Selkirk, with branch to Winnipeg, proposed immediately to be built—say.....	110
“ Also allowance for sidings and spare track on whole line from Fort William to Selkirk, and extension west of Selkirk—say.....	30
Total required for these services.....	277

“ Equal to, say—25,000 tons.

“ In addition to which the Georgian Bay Branch, contracted to be finished 1st July, 1880, will, if carried out, require nearly 5,000 more. In all 30,000 tons to be provided.

“ I would accordingly recommend that all the rails required, with a sufficient quantity of fastenings, should at once be contracted for, to be delivered at Montreal by each of the following dates, viz:—

“ One-third by 1st October, 1879.

“ One-third by 1st June, 1880.

“ One-third by 1st October, 1880.

“ I have the honour to be, Sir,

“ Your obedient servant,

“ SANDFORD FLEMING,

“ *Engineer-in-Chief.*

“ The Hon. Sir CHARLES TUPPER, K.C.M.G.,

“ Minister of Public Works.”

Three days afterwards an Order-in-Council authorized this recommendation to be acted upon :

"Copy of a Report of a Committee of the Honourable the Privy Council approved by His Excellency the Governor-General in Council, on the 13th June, 1879.

"On a Memorandum, dated 10th June, 1879, from the Honourable the Minister of Railways and Canals, reporting that it has become necessary at once to provide for the supply of rails for the portions of the Canadian Pacific Railway line now under contract, and also for those immediately to be put under contract—the quantity being about 30,000 tons; and recommending that he be authorized to advertise for tenders for the supply of rails required with a sufficient quantity of fastenings, to be delivered at Montreal as follows, viz.:—About one-third by the 1st October, 1879; about one third by the 1st June, 1880; and about one third by the 1st October, 1880.

"The committee advise that authority be granted as recommended.

"Certified.

"W. A. HIMSWORTH,
C. P. C.

Accordingly tenders were invited by the following advertisement published in English newspapers:—

"TENDERS FOR STEEL RAILS.

"Tenders addressed to the Honourable the Minister of Railways and Canals will be received at the Canadian Emigration Office, 31 Queen Victoria street, E.C., London, England, until July 15th next, for steel rails and fastenings, to be delivered at Montreal as follows:—

"5,000 tons by October 1st, 1879.

5,000 tons by June 1st, 1880.

5,000 tons by October 1st, 1880.

"Specifications, conditions, forms of tender, and all other information will be furnished on application at this office, or at the Canadian Emigration Office, 31 Queen Victoria street, E.C., London, England.

"By order,

"F. BRAUN,
Secretary.

"DEPARTMENT OF RAILWAYS AND CANALS,

"OTTAWA, 13th June, 1879."

Between the date of this advertisement and the 21st of the same month, the purchase of 5,000 tons of rails had been arranged for by cable telegraph as described in our reports on contracts 44, 45 and 46, leaving 25,000 tons necessary to be got for this railway and 11,000 for the Intercolonial.

On the 21st July, 1879, the tenders which had been received in due time were opened at London in presence of Sir Leonard Tilley, Sir John Rose, and the Chief Engineer. An abstract of them was made as they were opened and initialed by these gentlemen, but no decision was arrived

at, owing to the absence of the Minister of Railways, who was then in Europe, but not in England. On his reaching London, on 23rd July, it was then decided by Sir John Macdonald, Sir Charles Tupper, and Sir Leonard Tilley, in consultation with Mr. Fleming, to effect the purchase of the quantities above mentioned, and which included 9,000 tons beyond the £6,000 then understood to be required for use on the two railways.

Inasmuch as the question whether a Department ought to be moved by a speculative opinion, concerning the future prices in any market, to purchase property beyond what would be deemed requisite, in view only of the time at which it was to be used, involves a discussion of the principles upon which public funds may be dispensed by a Department of Government, we avoid comment on this feature, and we remark only on the judgment exercised concerning the financial results of the transactions.

Assuming then that this course was open to the Minister of Railways, we have to say that, in our opinion, the probability of a rise in the price of rails was at that day sufficient to induce a private party requiring 36,000 tons, and expecting in the future to require more, to purchase 9,000 tons beyond his immediate wants.

We are not influenced to this view by the subsequent facts, and although, according to the opinion of Mr. Reynolds, who took part in the inspection of the rails and was acquainted with the past fluctuations of the rail market, these purchases were at "about the lowest prices that have ever been entered into for steel rails either before or since, of that weight or quality;" and although the market rose so rapidly afterwards that the deliveries under the contracts were made at rates considerably less than the prices then prevailing, our duty is to look at the transaction by the light only of the circumstances which existed at that time.

In considering the matter which might then have led one to anticipate a rise in the price of steel rails, we ought not to omit the history of its previous fluctuations. These are already remarked upon in our report of contracts 6 to 11, and are indicated approximately in the copy of Mr. Sandberg's diagram which accompanies that report (page 171).

It will be there seen that in 1862 the ruling price was £19 stg., from which it fell to £10 in 1870, and after rising again to nearly £18 stg. during a short inflated period in 1873, it fell gradually, with occasional rests until sometime in July, 1879, when this diagram places it at £4 10s stg., less than half the price to which the market had descended in its first great

decline before mentioned. This price, £4 10s. is, of course, for delivery in England. In this instance, however, the competition brought out offers even more favourable than that, the first delivery under two of the three contracts was at £4 17s. 6d., and under the other at £4 19s. 0d., which prices covered the ocean freight to Montreal.

A review of the antecedents of the market would be likely, therefore, to create at that time a belief that its future would not be so favourable for buyers, but the position actually taken by the competing tenderers seems to us to have removed the subject from the region of theory, and to have given this belief a foundation of fact.

It will be remembered that tenders were invited for delivery at three different dates, 1st October, 1879, 1st June, 1880, 1st October, 1880. We set out hereinafter a synopsis of all the tenders for delivery at Montreal, but it is pertinent to the matter now under consideration, to point out a strong feature of the competition on this occasion.

Twenty-eight tenders were opened, seventeen of them for delivery at Montreal, the point named in the contracts; some of these were for the accessories only. In fourteen of them the prices for rails ranged, according to the dates of delivery, as follows :—

1st October, 1879, from	£4 17s. 6d.	to	£5 10s. 0d.
1st June, 1880, “	5 0s. 0d.	“	5 15s. 0d.
1st October, 1880, “	5 2s. 0d.	“	5 17s. 6d.

This tendency to the higher price, as time went on, was not confined to those tenders which took the highest and the lowest places respectively.

Eleven out of the fourteen competitors required higher prices for the later dates, and the average of them all was as follows :—

Delivery on 1st October, 1879.....	£5 4s. 2d.
“ 1st June, 1880.....	5 7s. 5d.
“ 1st October, 1880.....	5 9s. 5d.

From the evidence it appears to us that, while these offers were being framed, causes within the knowledge of the manufacturers as a class were already at work, which would soon make the production of rails more expensive; and so the tenders, at their opening, declared the time for the first deliveries to be a turning-point in the market.

The concurrence of opinion from so many independent sources, in fact rival sources, each a serious proposal for a business transaction, might, in

our judgment, well convince one that a rise in the price was more than probable, and at the same time the offers gave some intimation of the rate at which it would go up. Before these contracts were executed, one of the tendering firms, Wallace & Co., declined to carry out their offer for the reason, as Mr. Fleming says, that the price of rails rose between the tender and the acceptance of it.

In our judgment, the purchase, from his own funds, of one-fourth more than the quantity immediately required, would, on consideration of the facts above stated, commend itself to a careful business man as a desirable investment.

On 1st October following the Chief Engineer gave a history of this transaction as follows:—

“ CANADIAN PACIFIC RAILWAY,

“ OFFICE OF THE ENGINEER-IN-CHIEF,

“ OTTAWA, 1st October, 1879.

“ SIR,—I herewith transmit to you tenders for steel rails received during the past summer in England. The tenders were invited by advertisement, dated 13th June, 1879, and opened 21st July, 1879, by the Hon. Finance Minister, Sir Leonard Tilley, in presence of Sir John Rose and myself. The document A (in No. 20,595) shows the names of the parties tendering in the order in which the tenders were opened, numbered from 1 to 23, inclusive.

“ The tenders for delivery in Montreal are classified in statement B (in No. 20,595). For delivery f.o.b. in statement C (in No. 20,595). For delivery in miscellaneous places in statement D (in No. 20,595).

“ A summary of tenders for delivery of rails in Montreal will be found in statement E (in No. 20,595). For delivery f.o.b., in Statement F. For miscellaneous delivery, in statement G (in No. 20,595).

“ When tenders were opened Sir Charles Tupper, Minister of Railways and Canals, was not in England. He arrived in London on the 23rd July.

“ On the 24th July a telegram was sent to John Wallace & Co., copy enclosed H (in No. 20,595), making enquiries as to their tender and their ability to complete the contract.

“ Similar telegram was sent to Mr. A. T. Drummond, who represented this firm.

“ On 25th July (afternoon) no reply from John Wallace & Co. or Mr. Drummond having been received, it was decided to pass them over, on the ground of irregularity of tender and for other reasons, and accept tenders No. 21, Barrow Steel Co., for 15,000 tons, and tender No. 17, Guest & Co., for 10,000; both these companies were asked if they could deliver a larger quantity this year at the same prices. Unfavourable replies were received.

“ On the 26th July, the tender of the West Cumberland Co. for 5,000 tons was accepted; and that company was asked if they would deliver more on the same terms. The reply was unfavourable for further delivery.

“ Some correspondence having arisen with John Wallace & Co., a telegram was sent them on the 27th July, copy enclosed I (in No. 20,595) accepting their tender for 15,000 tons, and asking them to state the name of the manufacturers. On the 30th July no reply of any kind having been received from Wallace & Co., and the Barrow Co., through their agent, Mr. Halton.

Green, having expressed their willingness to renew proposals for an additional quantity, that gentleman was requested to make the proposal by letter, which he did on the 30th July enclosed K (in No. 20,596), and a reply was sent to him the same day, enclosed L (in No. 20,596) accepting the proposal to furnish 15,500, payments being postponed until after the 1st July, 1880.

"On the 31st July Mr. Drummond called in the interest of John Wallace & Co. He was told that as Messrs. Wallace & Co. had not been heard from since the 27th July, the matter was considered closed and other arrangements made. On the 2nd August, near midnight, a letter was received from Mr. Drummond on behalf of John Wallace & Co, which see M (in No. 20,596).

"On the 8th August John Wallace & Co. wrote that they were ready to go on with the contract, enclosed N (in No. 20,596); and on the 11th August, a reply was sent to them, accepting the proposal, and stating the terms of contract, enclosed O (in No. 20,596).

"On the 15th August Mr. Stewart and another gentleman from John Wallace & Co., called and promised a reply that evening by telegraph, whether or not they would undertake the whole 15,000 tons, or only 10,000 tons, the latter to be delivered in 1880; the Minister having given them the option. No further communication had been received from Messrs. Wallace and Co. up to the time I left London on the 18th August.

"Before I left London, directions were given with regard to the preparation of contracts and other matters. Mr. Thos. Reynolds, jun., was appointed Inspector of Rails for the Department on the terms of the letter dated 26th July, 1879, enclosed P (in No. 20,596). In this duty he is to be assisted by Mr. C. P. Sandberg, a former inspector.

"On the execution of the contracts by the manufacturers in England, Mr. Reynolds was to forward them here; but at this date they have not been received.

"The tenders as opened by Sir Leonard Tilley, Sir John Rose and myself accompany this.

I am, &c., &c.,

"SANDFORD FLEMING.

"Engineer-in-Chief.

"F. BRAUN, Esq.,

"Secretary Department of Railways and Canals."

Messrs. Wallace & Co referred to in the above report did not carry out their offer, although it was formally accepted, and a suit at the instance of the Government was instituted against them for the purpose of recovering damages for their default. Subsequently the suit was abandoned under the authority of the following Order-in-Council:—

"Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council on the 6th January, 1880.

"On a Report, dated 5th January, 1880, from the Honorable the Minister of Railways and Canals, stating that Mr. John Wallace of Dundee, Scotland, has presented a memorial praying that the action instituted in the law courts in London, England, by the Government against his firm, John Wallace & Co., for damages for breach of their contract for the supply and delivery of 15,000 tons of steel rails, may be discontinued upon his assuming the payment of all the costs and expenses of the suit.

"That it appears from the memorial that the agreement to enter into the contract in question was made in the absence of the senior partner of the firm of John Wallace & Co., who represents that a suit against them would force the firm into bankruptcy.

"The Minister is of opinion that it is doubtful if any advantage would result to the Government from the prosecution of the suit against John Wallace & Co., and recommends that it be discontinued on the payment by the memorialist of all the costs and expenses.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified.

"J. O. COTÉ,

"A. C. P. C."

With Mr. Fleming's report of 1st October was sent a list of the papers which accompanied it. We do not find it necessary to reproduce in full either the list or any of the papers. We have examined the originals, and in connection with the other evidence they show, that each of the three contracts under consideration, was based upon the lowest available offer for the whole, and every portion of the quantity covered by it.

We give below a statement showing the price of each thousand tons at the respective rates named in the fourteen tenders for delivery at Montreal, and the rank which the tenderers take, giving the lowest offer, the highest place, and so on :—

NAMES.	COST OF 1,000 TONS OF RAILS WITH PROPORTIONATE QUANTITY OF FISH-PLATES AND BOLTS AND NUTS.			
	1st Oct., 1879.	1st June, 1880	1st Oct., 1880.	Mean.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
West Cumberland Co	5,245 10 0	5,401 10 0	.....	5,323 10 0
Barrow Hæmatite Co.....	5,212 10 0	5,342 10 0	5,473 15 0	5,342 18 4
Guest & Co.....	5,230 0 0	5,360 0 0	5,620 0 0	5,403 6 8
W. Banks	5,554 10 0	5,513 5 0	5,489 7 6	5,519 0 10
Moss Bay Hæmatite Steel Co.....	5,604 10 0	.....	.....	5,604 10 0
Steel, Tozer & Hampton	5,500 0 0	5,625 0 0	5,750 0 0	5,625 0 0
The John Cockerill Works Co. ....	.....	5,487 10 0	5,800 0 0	5,613 15 0
Brown, Bayley & Dixon.....	5,675 10 0	.....	.....	5,675 10 0
W. H. Pillow & Co.....	5,612 10 0	5,758 15 0	5,758 15 0	5,710 0 0
Samuel Fox & Co.....	.....	5,750 0 0	5,750 0 0	5,750 0 0
Charles Cammell & Co	5,671 17 6	5,803 2 6	5,803 2 6	5,759 7 6
Bolkow, Vaughan & Co.	5,605 0 0	5,867 10 0	5,867 10 0	5,780 0 0
Rhymney Iron Co.....	.....	5,880 0 0	5,880 0 0	5,880 0 0
Bateman & Co.	5,775 0 0	5,958 15 0	6,168 15 0	5,961 10 0

This statement shows the order in which the tenders were most favourable to the Government, who took 30,000 tons, (all they would agree to furnish) from the first; 10,000 (all they would agree to furnish) from the second, and 5,000 from the third.

We are led to conclude that in each of these contracts, the Department thus secured the materials covered by it at a lower rate than could have been done by any other means then within its reach, and that in no case did any of the contractors get an undue advantage.

CONTRACT No. 53.

This was dated 30th August, 1879, and by it the Barrow Hæmatite Steel Company undertook to manufacture, according to specifications attached to the contract, and to supply and deliver at Montreal, steel rails, together with such quantity and number of steel fish-plates, as might be proportionate to, and required for laying the said rails, and also such quantity and number of iron bolts and nuts, as might be proportionate to and required for the rails.

The quantity of rails, and the respective dates of delivery, and the price of each class of material were as follows:—

Date of Delivery.	Rails, Tons.	Rates per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Bolts and Nuts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879.....	5,000	4 17 6	5 17 6	10 5 0
June 1st, 1880.....	5,000	5 0 0	6 0 0	10 5 0
September 1st, 1880.....	5,000	4 17 6	5 17 6	10 5 0
do	5,000	5 0 0	6 0 0	10 5 0
October 1st, 1880.....	10,000	5 2 6	6 2 6	10 7 6

The time for the fulfilment of the contract had not expired at the date of our commission. It had been partially fulfilled, and up to 30th June, 1880, the amount paid on it was \$233,936 for the Canadian Pacific Railway. This covered about three-fourths of the whole quantity which had been delivered up to that time by these contractors; the remainder had been delivered to the Intercolonial Railway, and charged to that account.

CONTRACT No. 54.

By this agreement, dated 11th September, 1879, George Thomas Clark, under the style of Guest & Co., undertook, in terms similar to those of Contract 53, to deliver at Montreal, steel rails, with fish-plates, bolts and nuts, as follows:—

Date of Delivery.	Rails, Tons.	Rate per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Nuts and Bolts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879.....	5,000	4 17 6	5 17 6	12 0 0
June 1st, 1880.	5,000	5 0 0	6 0 0	12 0 0

The contract was fulfilled. The amount paid on it up to 30th June, 1880, was \$79,480.11, for the Canadian Pacific Railway. This covered about two-fifths of the whole which had been delivered up to that time by these contractors; the remainder had been delivered to the Intercolonial Railway, and charged to that account.

CONTRACT No. 55.

By this agreement, dated 29th August, 1879, the West Cumberland Iron and Steel Company undertook, in terms similar to those of contract 53, to deliver at Montreal steel rails, with fish-plates, bolts and nuts, as follows:—

Date of Delivery.	Rails, Tons.	Rate per ton of 2,240 lbs.		
		Rails.	Fish-plates.	Bolts and Nuts.
		£ s. d.	£ s. d.	£ s. d.
October 1st, 1879... ..	3,000	4 19 0	4 19 0	9 15 0
November 1st, 1879.....	2,000	4 19 0	4 19 0	9 15 0

The contract was fulfilled. The amount paid on it up to 30th June 1880, was \$110,076.56.

CONTRACT No. 56.

Constructing a Bridge.

This agreement is not contained in a single document ; it was made by accepting, on the 29th November, 1879, a tender sent in by the Kellogg Bridge Co. for the construction of a railway bridge, according to specifications, over Rat River on the Pembina Branch, the price for its completion being \$1,384.

The following report by the Chief Engineer shows the necessity for the work and the first steps towards the contract.

" CANADIAN PACIFIC RAILWAY,

" OFFICE OF THE ENGINEER-IN-CHIEF,

" OTTAWA, 24th November, 1879.

" SIR,—On my return from Manitoba I reported, among other things, that a permanent bridge should be erected at Rat River on the Pembina Branch, as the present temporary structure was far from satisfactory, and liable to be washed away by the spring freshets.

" While on the spot I directed the contractors to prepare pile abutments for the new bridge, and on reaching Ottawa, under your authority, I had an advertisement put in the Toronto, Hamilton and Montreal papers inviting tenders for a single 60 feet iron span.

" Tenders have been received from the Hamilton Bridge Company, the Toronto Bridge Company and the Kellogg Bridge Company. An abstract of these tenders is attached.

" I found that the peculiar design of the Kellogg Bridge would necessitate lengthening it three feet to fit the abutments now under construction. I asked by telegraph what additional sum would be required for the extra three feet, and received the following reply : —

" Three feet additional length will cost eighty-four dollars."

" The three acceptable tenders will therefore stand thus :—

Hamilton Bridge Company.....	\$2,798
Toronto Bridge Company.....	3,403
Kellogg Bridge Company.....	1,384

" I find, on examining the tenders, that to the Kellogg Bridge Company's tender will require to be added the cost of timber beams or ties immediately under the rails. This should not bring the whole cost of the span over \$1,600 erected in place and rails laid.

" I would advise the immediate acceptance of the tender of the Kellogg Bridge Company, if they will undertake to complete the contract by the 1st February next.

" I am, Sir, your obedient servant,

" SANDFORD FLEMING,

" Engineer-in-Chief.

" The Hon. Sir CHARLES TUPPER, K.C.M.G.,

" Minister of Railways and Canals."

Before advertising for tenders as mentioned in this report, Mr. Fleming, considering the matter very urgent, proposed to the Department

that the required bridge should be manufactured without competition, but it was decided to advertise for offers, and the result was the three proposals mentioned by him. We have not thought it necessary to repeat the substance of them, inasmuch as Mr. Fleming's report shows, that the one accepted was the lowest and at almost half the price of the one next above it. The Kellogg Bridge Co. was notified on the 29th November that their tender was accepted.

In consequence of delay in the fulfilment of the bargain, and Mr. Fleming's alarm at the state of the temporary bridge, a person was sent to Buffalo to get the materials, and these were transported to the place for which the bridge was intended; it was then erected by days labour, the cost of it being charged to the contractors. The work was completed in this way, and the bridge gives satisfaction.

Up to the 30th June, 1880, the amount paid on the contract was \$1,150.

CONTRACT NO. 57.

Railway Frogs.

This agreement is not contained in a single document; it is embraced in an offer made by the Truro Patent Frog Company, and the acceptance of it, whereby this company undertook to furnish 120 Starrat's adjustable steel rail frogs of specified angles, for the sum of \$65 each, and switch frames, signal posts, connecting bars and gearing complete, (which included wood-work, head blocks and sliding chains,) " \$35 every switch complete."

There was no public competition in this case. The Government had previously been getting railway frogs made at the Kingston Penitentiary at \$80 each, the connecting bar at \$15.50, and the switch gear at \$40, in all \$136.50, for what cost \$100 under this contract.

Mr. Schrieber, considering the Truro frog better than that which had been previously used, brought it to the notice of Mr. Fleming, pointing out that the rails were perfectly interchangeable, that it had more inherent strength, and that after using it on the Intercolonial Railway he had found it all that could be desired.

On the 1st September, 1879, Mr. Smellie, in the absence of the Chief Engineer, reported to the Department that a number of frogs with switch gear were wanted for use at Fort William and in Manitoba, and recom-

mended that these articles should be manufactured without delay, so as to be delivered before the close of navigation.

Mr. Fleming stated in his evidence that he knew of no other place in the country where these frogs could be made, except by the consent of the present contractors, who either were the patentees, or had secured from the patentees the right to make them.

At the request of the Department these contractors stated by telegram their terms for the manufacture of 120 ; these terms being as above mentioned. Their proposal was accepted, and the acceptance was confirmed by an Order in Council.

The saving was not as great as the difference between the price paid previously for those manufactured at Kingston, and those made at Truro, *i.e.* \$36.50. The cost of transportation between those points was to be deducted from this difference, to show the actual saving. That cost was not ascertained by us.

We give below the Order in Council to which we have alluded :—

“Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 23rd December, 1879.

“In a Report, dated 20th December, 1879, from the Honourable the Minister of Railways and Canals, stating that in the month of November last, upon an intimation from the Engineer-in-Chief of the Canadian Pacific Railway, that certain frogs and switch gear were required before the close of navigation for use in the Fort William and Manitoba districts of that railway, he authorized the acceptance of an offer received from the Truro Patent Frog Company to supply 120 of “Starrat’s Patent Adjustable Steel Rail Frogs,” for the sum of \$65 each, and switch frames, signal posts, connecting ties and gearing complete, for \$35 per switch complete, making a total cost of \$100 per set, and requesting that his action in the matter, for the reasons stated in his report, be approved, and that the order given to the Truro Company be confirmed.

“The Committee recommend that the action of the Minister of Railways and Canals be confirmed as requested.

“Certified.

“J. O. COTE,

“Assistant Clerk, Privy Council.”

On the evidence we conclude that by this contract the Department procured the property covered by it at as low a price as would have been possible by any other course, and that the contractor got no undue advantage.

The contract was fulfilled, and the amount paid on it to 30th June, 1880, was \$12,000.

CONTRACT No. 58.

Railway Turn-tables.

By this agreement, dated 26th February, 1880, W. Hazlehurst undertook to make, according to specifications, and to deliver one decked turn-table at the price of \$2,016, and three open ones at \$1,360 each.

This agreement was the result of competition, invited by circular, addressed to the Hamilton Bridge Company, the Toronto Bridge Company, the Kingston Engine Works, and W. Hazlehurst of St. John.

The circular was as follows :—

“Several first-class iron turn-tables, fifty feet in diameter are required for the Pacific Railway; the first in the engine house at Selkirk must be erected and placed by the 15th March next, This must be decked, the deck supported in centre; for the other tables required, separate prices are invited; for deck and open work proposals will be received up to 30th instant, February, 1880. Drawings should accompany proposals.”

The tenders were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming, and were reported on by Mr. Fleming on 14th February, 1880.

The lowest offer was by W. Hazlehurst, and this contract was based upon its terms. Mr. Fleming's report recommended its immediate acceptance; it was the most favourable for both decked and open turn-tables. The next highest offer was from the Hamilton Bridge Company at \$2,350 for the decked, and \$1,700 for the open turn-table.

According to the evidence of Mr. Fleming, every one in the business likely to send in a tender was appealed to by the said circular, and all probable Canadian competition was thereby excited. He thought that the mode of inviting tenders which was adopted in this case was the best in the public interest.

On the evidence we conclude that in awarding this contract, the Department provided for the articles covered by it at as low a price as was then possible, and that the contractor got no undue advantage.

The contract was not fulfilled at the date of our commission. The amount paid on it up to 30th June, 1880, was \$2,016.

CONTRACT No. 59.

Railway Ties.

By this agreement, dated the 7th day of February, 1880, Charles Whitehead, Henry N. Ruttan and John Ryan, undertook to make and de-

liver 100,000 tamarac ties, according to specifications, on the track on section 14, in sufficient time to admit of their being hauled to the west side of Red River, over the temporary track then laid upon the ice at Point Douglas, in Winnipeg, receiving therefor 27 $\frac{3}{4}$ cents per tie, if stumpage should be charged against them by the Government, otherwise the price should be three cents per tie less.

This contract was brought about because it was deemed expedient by the Government to secure ties for at least a portion of the second hundred miles west of Red River, before the ice broke up in the spring of 1880. The Chief Engineer considered that if the matter were put off until the contract for that portion of the line was let, it would be too late for the contractor to secure the ties necessary to enable him to lay the track, and the Minister concurred in the proposal to invite tenders, before the winter passed away. A letter on the subject was addressed to the Minister by the Chief Engineer, recommending that arrangements should be made without delay, and that the ties, when obtained, should be taken to the west side of the river, and there piled at convenient places until wanted. The suggestion was concurred in and the following telegram sent to Mr. Rowan, at Winnipeg, on the 29th January, 1880 :—

“Receive tenders for 100,000 tamarac ties to be delivered along track, section 14, in time to be taken across ice bridge to west side of Red River. Telegraph particulars of tenders on receipt.

“SANDFORD FLEMING.”

On the 5th February Mr. Rowan telegraphed Mr. Fleming as follows :

“Ten tenders for ties received to-day. The following are the lowest, the price covering the Government charge for stumpage. Deduct three cents in all cases if stumpage will not be charged.”

The names are then given, showing that Charles Whitehead and Henry N. Ruttan made the lowest tender at the rate above mentioned. The prices varied up to 33 cents per tie. On the following day Mr. Fleming was authorized to telegraph to Mr. Rowan that the tender of Whitehead & Ruttan was accepted, and Mr. Rowan was instructed to make a contract for delivery in good time. Mr. Ryan's name was added to the firm of contractors with the approval of the Minister. This contract appears to have been entered into at a price as low as would be paid under any other arrangement. The delivery of the whole quantity agreed upon was completed early in April, 1880. Some delay took place in the settlement of the amount due to the contractors, on account of a second inspec-

tion which Mr. Rowan considered to be necessary in the public interest. Up to the date of our commission \$20,800 had been paid upon the contract.

CONTRACT NO. 60.

Railway Construction.

By this contract, dated 23rd December, 1879, Andrew Onderdonk covenanted to complete according to specifications, on or before 31st December, 1883, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway, from Emory's Bar to Boston Bar, about 29 miles, (known as section A), in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,727,300) would be exceeded at the said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

The first advertisement inviting competition for the work in British Columbia was in August, 1878, on which occasion tenders were asked for the distance between Yale and Kamloops, (about 125 miles.) Subsequently the time was extended by advertisement until 12th January, 1879. No action was taken on that occasion, because it had been decided by the Government to get fuller information concerning the route to British Columbia, before placing this construction under contract.

On the 3rd October, 1879, advertisements called for tenders up to 17th November, 1879, and forms of tenders, as well as specifications and other memoranda of information, were prepared and furnished to applicants. The distance before mentioned, from Yale to Kamloops, was divided into four sections:—

Section A. Emory's Bar to Boston Bar, 29 miles.

“ B. Boston Bar to Lytton, 29 “

“ C. Lytton to Junction Flat, 28½ “

“ D. Junction Flat to Savona's Ferry, 40½ “

and separate tenders invited for each.

After it was decided by the Government to place this portion of the line under contract, the mode of inviting tenders was discussed by the Privy Council, and after a statement by the Chief Engineer upon the subject, it was considered that the construction of the whole distance would be an

undertaking so heavy, as to induce competition from only a few persons, and consequently that dividing it into four sections, and inviting offers on each section, would result in a keener competition, and finally a smaller cost for the whole; and, therefore, the offers were asked in that shape.

The tenders were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming.

On 22nd November, 1879, Mr. Fleming reported on the substance and effect of the several tenders, giving also a summary of those four contractors who had made offers for the four sections, showing the gross amounts in each case; this is to be found at page 144, of a Blue-book Return to the House of Commons, dated 16th February, 1880, which return included all tenders for works on this railway since January, 1879, and other particulars concerning them, each regular tender for each of the sections above mentioned being set out in full.

The lowest regular tender was accepted for each of the four sections, and became the basis of the contract finally executed.

The following are extracts from Mr. Fleming's said report:—

"I have examined the rates given in the lowest tenders; they generally bear a fair relation to each other, and are about the prices for which other work has been recently placed under contract on other sections of the railway. I do not think experienced and responsible contractors would be safe in undertaking to do the same work at less rates.

"Those who made the surveys and calculations inform me that the quantities are very full, and that in actual execution they can be largely reduced. I am convinced, moreover, that by making an extremely careful study of final location, by sharpening the curvature in some places, by using great judgment in adjusting the alignment to the sinuosities, and sudden and great inequalities of the ground, by substituting the cheaper classes of work for the more costly, wherever it can safely be done, and by doing no work whatever that is not absolutely necessary, a very marked reduction can be made."

Some errors were discovered in the addition of some of the tenders—after correction the five lowest stood as follows for section A, (the subject of this contract):—

1. D. McDonald & Co.....	\$2,727,300
2. J. Heney & Co.....	2,761,380
3. C. Peterson.....	2,766,745
4. Rogers & Farrell.....	2,940,115
5. Shields & Co.....	2,993,620

For this section, there were two tenders adjudged, at the time of opening, to be irregular, both having reached the Department at 3.30 p.m. of the 17th November, on which day noon had been named as the last hour for the receipt of offers. One was from Messrs. Battle, Symmes and Jackson, at \$2,634,120. The other from Brown and Corbett, at \$2,598,480. The

latter was not accompanied by the name of any sureties or by any cheque, as was required by the stated conditions.

At the time of opening these tenders the Minister of Railways was not in Ottawa, and the tenders were put in a sealed package, and until his return were kept by Mr. Trudeau in a safe in his room. On the return of the Minister the contract for this section was awarded to D. McDonald & Co.; and they were notified to that effect by a letter from the Secretary of the Department, dated 25th November, 1879, which required them to deposit by the 8th December following the sum of \$136,000 as security to the Government. This letter was acknowledged on the following day by a letter from this firm, in which they stated that they were prepared to comply with the conditions of the specifications and tender.

On 2nd December, Messrs. D. McDonald & Co., lodged the necessary security for the contracts for sections A and C, with the Department, in the shape of deposit receipts of the Banque d'Hochelaga for \$238,000.

The evidence shows that this contract was awarded at the lowest rate open to the Department, and that the parties to whom it was awarded got thereby no undue advantage.

On the 20th December, 1879, a document to the following effect was received at the Department:—

“OTTAWA, 15th December, 1875.

“SIR,—We hereby authorize the award of the contract for sections A and C of the Canadian Pacific Railroad, in British Columbia, being transferred from us to Andrew Onderdonk, and to the execution by the Government of contract for the said sections with said Onderdonk, and the acceptance by the Government of the deposit required as security for such contracts from said Onderdonk in lieu of that deposited by us, which we agree to receive back from the Government on the security to be put up by said Onderdonk being accepted by the Government.

“Your obedient servants,

“McDONALD, LOSS, CHARLEBOIS, McCRAE & CO.,

“As per subjoined names of the individual members thereof:

“DUNCAN McDONALD,

“H. McFARLAND, per D. McD.,

“L. M. LOSS,

“WM. McCRAE,

“A. CHARLEBOIS,

“L. Z. MALLETT,

“ED. SHANLY,

“JOHN SULLIVAN,

“P. McCRAE, per D. McD.,

“A. P. MACDONALD.

“To the Hon. Sir CHARLES TUPPER, K.C.M.G.,

“Minister of Railways and Canals,

“Ottawa.”

The Minister submitted to the Privy Council a memorandum, of which the substance is shown in the following Order-in Council:—

"COPY of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 22nd December, 1879.

"On a memorandum dated 20th December, 1879, from the Honourable the Minister of Railways and Canals, reporting that Messrs. McDonald & Co., the lowest bidders for the sections of the Canada Pacific Railway extending from Emory's Bar to Boston Bar (section A) and from Lytton to Junction Flat (section C), have filed in his Department letters from the cashier of the Banque d'Hochelaga stating that Messrs. McDonald, Loss, Charlebois, McCrae & Co. had deposited in his bank to the credit of the Receiver-General the sums of \$198,334 and \$39,666, forming together the sum of \$238,000, payable on demand.

"That on the 20th instant Messrs. Duncan McDonald & Co. have addressed a letter to the Department requesting that the contracts for the two sections A and C be given to Andrew Onderdonk, and that Mr. Onderdonk has deposited to the credit of the Receiver-General in the Bank of Montreal the security required.

"The Minister recommends that he be authorized to enter into contract with Mr. Andrew Onderdonk for the construction of sections A and C at the prices named in the tenders of Messrs. Duncan McDonald & Co.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified.

"J. O. COTÉ, *Assistant Clerk.*

The contract was entered into with Mr. Onderdonk under this authority.

The firm to whom this contract had been awarded, Messrs. D. McDonald & Co., were also successful tenderers for section C, and the contract for that was also awarded to them by letter of 25th November, 1879.

For assigning their position concerning these two contracts, Mr. Onderdonk paid that firm \$100,000.

The evidence shows us that there had been, previous to the opening of the tenders, no arrangement by which Mr. Onderdonk, or any one on his behalf or for whom he was agent was in any way interested in the tender of this firm for either of these contracts (A and C).

Mr. Onderdonk finally became the contractor for the whole four sections in British Columbia. He executed three of the contracts in his own name, and the other was assigned him after it had been entered into by Purcell & Co.

We have examined several witnesses upon the question whether, under the circumstances, placing all the contracts in the hands of this contractor was an advantage, or a disadvantage to the public.

Mr. Trudeau testified, that he thought it better that large works should be placed as much as possible in the hands of a single firm if it had large means; that the works are more likely to be constructed effectively, because there would be a unity of action in the preparations and in the manner of conducting the work, in the purchase of provisions and the plant required and less competition for labour; and that it would be a material advantage in this case, because, at all events, all the plant and supplies would probably have to come from one end of the works in British Columbia, and the present arrangements would prevent disputes between different contractors.

Mr. A. P. Macdonald, one of the firm who had made the successful tender, and who had had large experience in contracting, was a witness before us. He stated, in effect, that in a country like British Columbia, one company could do the work on the whole distance at from 15 to 20 per cent. less than it could be done by dividing it into four sections, and that this would enable a person to pay something for the contract, for the whole, and still make as much profit as separate contractors could make on separate sections at the original prices. That in sub-divisions more plant and machinery per mile of the work would be required than on a contract for the whole distance, and he mentioned also the advantage of controlling the labourers better under one management, than by competitors on different sections.

Mr. McCrae, another of Mr. McDonald's firm, gave evidence in the same direction.

Mr. Mills, who represented a syndicate formed to support Mr. Onderdonk in the fulfilment of these contracts, gave his evidence. He had had much experience concerning railways, not as a contractor, but as a proprietor and in furnishing money for building them. His opinion was that all these sections being close together, and all very heavy work, that competition for labour and in other ways would be detrimental, that they could all be prosecuted under one head with much greater economy, that, on the whole, he believed the work would be more efficiently done by having one contractor than separate firms for different portions of the work.

Mr. Fleming testified that, in his opinion, placing all the works in the hands of one contractor, would result in considerable advantages.

Mr. Goodwin, Mr. Ryan and Col. Smith, all contractors of experience, gave evidence to the same effect.

Sir Charles Tupper testified that it was decided to allow Mr. Onderdonk to become the sole contractor, because it was believed that he having the command of great resources, and being a skilled contractor, the work could be executed in a more satisfactory manner, and probably at less cost to the country, than separately by the original parties.

It is in evidence before us, that on an earlier occasion when the letting of contracts 41 and 42 was under consideration by the Department, the Chief Engineer had the impression, that if a firm sufficiently strong in resources and skill, "to grapple with the work as a whole," had it in hand, the work would be done earlier than by separate contractors, and it was then considered by the Minister and his colleagues that it would be proper in the public interest to expend, if necessary, a larger sum for the whole distance under one contract than under two.

In Mr. Fleming's report on the tenders for contracts 41 and 42, he alludes to the advantages to be gained by placing the whole work in the hands of a single firm, provided it was a satisfactory one.

The evidence leaves no room to doubt that the arrangement by which the work on these four sections was placed in the hands of one firm of contractors, was a very desirable one in the public interest, and that it was secured without paying an extra price on that account. Not much had been done under the contract at the date of our Commission, and nothing had been paid on it.

CONTRACT No. 61.

Railway Construction.

By this contract, dated 10th February, 1880, Patrick Purcell, Hugh Ryan, James Goodwin and James N. Smith covenanted to complete, according to specifications, on or before the 30th June, 1884, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Boston Bar to Lytton, about 29 miles (known as section B) in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,573.640) would be exceeded at the said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, C, and D, in British Columbia by an advertisement dated 3rd October, 1879, which invited tenders for each section, up to noon of 17th November, 1879, and which gave notice that forms of tenders, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections, rather than as a whole, are stated in our report on contract No. 60. We have also given there some extracts concerning the whole four sections, from the report of Mr. Fleming, dated 22nd November, 1879, on the tenders received on that occasion, and which is printed in full at page 144, of a Blue-Book return to the House of Commons, dated 16th February, 1880, giving the tenders for works on this railway since January 1879.

The tenders in this case were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming.

After correction of any errors found in the addition in the tenders, the five lowest for this section stood as follows :—

1. Purcell & Co.....	\$2,573,640
2. D. McDonald & Co.....	2,592,225
3. Shields & Co.....	2,602,185
4. Bannerman & Co.....	2,607,702
5. Fraser & Grant.....	2,678,310

There was one irregular tender, which was higher, however, than the one accepted, and therefore its admission would not have affected the result.

The tenders, after they were opened, were kept by Mr. Trudeau in a safe in his room till the return to Ottawa of the Minister, who was then absent. On his return the lowest tender was accepted, the parties duly notified, and after furnishing the proper security, the contract was executed to the effect above mentioned.

The evidence shows that the Department, by this contract, secured the work covered by it at the lowest available price, and that the contractors got by it no undue advantage.

After the award of this contract to Messrs. Purcell & Co., and before its execution, the members of that firm addressed the following letter to the Minister :—

" OTTAWA, 15th January, 1880.

" SIR,—We hereby authorize the award of the contract for section "B," of the Canadian Pacific Railroad in British Columbia being transferred from us to Andrew Onderdonk, and to the execution of a contract by the Government for said section with said Onderdonk, and the acceptance by the Government of the deposit required as security for such contract from said Onderdonk in lieu of that deposited by us, which we agree to receive back from the Government, on the security to be put up by said Onderdonk being accepted by the Government.

" Your obedient servants,

" PATRICK PURCELL,

" HUGH RYAN,

" JAMES GOODWIN,

" JAMES N. SMITH.

" The Hon. Sir CHARLES TUPPER, K.C.M.G.,

" Minister of Railways and Canals, Ottawa."

At the date of this letter Mr. Onderdonk had already obtained the contracts for the three other sections in British Columbia, the proposition to substitute him for the firm to whom this section had been awarded, was not acceded to at once by the Department. The matter was referred to the Chief Engineer, who reported as follows :—

" OTTAWA, 28th January, 1880.

" SIR,—A communication of date 15th January, signed by Patrick Purcell, Hugh Ryan, James Goodwin and James N. Smith, has been referred to me for report.

" These parties sent in the lowest tender for the section in British Columbia extending from Boston Bar to Lytton, and the communication to which I refer, on their part, authorizes the transfer of all their interest in the contract and work to Mr. Andrew Onderdonk, and I am requested to state if I see any objections to the transfer.

" As the other three sections in British Columbia are already awarded to Mr. Onderdonk, and the one in question intervenes between them, it would result in considerable advantages to have the whole in the hands of one contractor of sufficient strength to carry on the work; and from the letters furnished by the General Manager of the Bank of Montreal, and others of high standing, there would appear to be no doubt of Mr. Onderdonk's financial ability and experience.

" I am, etc.,

" SANDFORD FLEMING,

" Engineer-in-Chief.

" The Hon. Sir CHARLES TUPPER, K.C.M.G.,

" Minister of Railways and Canals, Ottawa."

On the 30th of the same month the Minister addressed a letter to the Hon Mr. Trutch, the Agent in British Columbia for the Dominion Government, asking whether, in his opinion it would be in the public interest to take Mr. Onderdonk as the contractor for this, as well as the other three sections.

On the day following, Mr. Trutch, who was in Ottawa, answered, giving an opinion decidedly in favour of the arrangement. (See page 191, of the above mentioned Blue-Book.)

On the 10th February, 1880, the firm of Purcell & Co. formally assigned the contract to Andrew Onderdonk, and subsequently an Order-in-Council authorized the Minister to accept and confirm it, substituting Mr. Onderdonk as the party dealing with the Government, and directing the security of the first contractors to be released on receiving an equivalent.

Mr. Onderdonk paid Purcell & Co. \$100,000 for the assignment of their contract. We have examined as witnesses three of this firm, Mr. Goodwin, Mr. Ryan and Col. Smith, and we find that previous to the opening of the tenders, there was not any understanding by which Mr. Onderdonk, or any one with whom he was connected, was in any way interested in the tender of Purcell and Co. for this section.

In our report on contract No. 60 we have remarked upon the advantage to the public interest gained by this arrangement, which placed the four British Columbia sections in the hands of one contracting firm of ability, and ample means.

There was but little done under this contract at the date of our Commission, and nothing paid.

CONTRACT No. 62.

Railway Construction.

By this contract, dated 23rd December, 1879, Andrew Onderdonk covenanted to complete, according to specifications, on or before the 31st day of December, 1884, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Lytton to Junction Flat, about 28½ miles (known as section C), in British Columbia, receiving therefor the respective prices affixed to the different items, and classes of work, mentioned in a schedule in the said contract, and subject to the condition that if it should appear that the total sum therein named as the intended expenditure (\$2,056,950) would at the said prices be exceeded, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, B and D, in British Columbia, by an advertisement, dated 3rd October,

1879, which invited tenders for each section up to noon of 17th November, following, and gave notice that forms of tender, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections rather than as a whole, are stated in our report on contract No. 60. We have there also given some extracts which relate to all the sections from a report of Mr. Fleming on the tenders received on that occasion, which is printed in full at page 144 of the Blue-Book return to the House of Commons, concerning tenders for works on this railway, since January, 1879, and dated 16th February, 1880.

The tenders for the four sections were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming; after correcting some errors in addition, the five lowest for section C stood as follows :—

1. D. McDonald & Co.....	\$2,056,950
2. Purcell & Co.....	2,070,310
3. Bannerman & Co.....	2,168,200
4. Shields & Co	2,220,240
5. English & Co.....	2,256,200

At the opening one tender was found to be lower than that of D. McDonald & Co. above mentioned, but being irregular it was not treated as competing, it was received some hours after noon, the time named in the advertisement for the receipt, and it was accompanied neither by names of sureties nor cheques, as required by the terms stated in the forms of tenders.

The tenders, after they were opened, were kept by Mr. Trudeau in a safe in his room till the return of the Minister, who was then away from Ottawa. On his return the lowest tender was accepted, and the parties duly notified to that effect by the Secretary of the Department.

The evidence shows that by this contract, the Department procured the work covered by it at the lowest available offer, and without giving the parties to whom it was awarded any undue advantage.

The contract for this section and section A were awarded on the same day, 25th November, 1879, to this firm, D. McDonald & Co., and subsequently by a document, dated in December following, they authorized the Department to give the contracts for both sections to Andrew Onderdonk. This document is set out in full in our report on contract No. 60, as well as an Order-in-Council, dated 22nd December, 1879, authorizing the Minister

to enter into the two contracts for sections A and C with Andrew Onderdonk, instead of the firm to whom they had been awarded.

For the transfer of those two contracts Mr. Onderdonk paid them \$100,000. The evidence shows that previous to opening the tenders there was no understanding by which Mr. Onderdonk, or any one with whom he was connected, was interested in the tender for this work made by Messrs. D. McDonald & Co.

In our report on contract No. 60 we mention several witnesses who were examined upon the expediency of substituting, as was done in this case, one contractor for the four sections in British Columbia, for those to whom the several sections had been separately awarded, and we give the general effect of their evidence.

They were unanimous in the opinion that it was an advantage to the public interest, to have the whole work in the hands of one able contractor, as is here the case, rather than under the management of several separate firms.

There was little done under this contract up to the date of our Commission, and nothing paid.

CONTRACT No. 63.

Railway Construction.

By this contract, dated 15th December, 1879, Andrew Onderdonk covenanted to complete, according to specifications, on or before the 30th June, 1885, all the works mentioned therein, including the excavation, grading, bridging, track-laying and ballasting on the railway from Junction Flat to Savona's Ferry, about $40\frac{1}{2}$ miles (known as section D), in British Columbia, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition that if it should appear that at those prices the total sum therein named as the intended expenditure (\$1,746,150) would be exceeded, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

This was submitted to competition, together with other sections known as A, Band C, in British Columbia, by an advertisement, dated 3rd October, 1879, which invited tenders for each section up to noon of 17th November

following, and gave notice that forms of tender, specifications and other information would be furnished to applicants.

The reasons for the decision to advertize the work in British Columbia by separate sections rather than as a whole, are stated in our report on contract No. 60. We have also given there some extracts from Mr. Fleming's report, dated 22nd November, 1879, on all the tenders received on that occasion for the different works in British Columbia. This is printed in full at page 144 of a Blue-Book return to the House of Commons, concerning tenders for works on this railway since January 1879, dated 16th February, 1880.

The tenders for the four sections were opened by Mr. Trudeau, Mr. Braun and Mr. Fleming. After correcting some errors in addition the five lowest for section D stood as follows :—

1. T & M. Kavanagh.....	\$1,809,150
2. C. C. Gregory & Co.....	1,844,590
3. Shields & Co.....	1,928,400
4. Bannerman & Co.....	1,951,000
5. English & Co.....	1,965,550

At the opening one tender was excluded from the competition, it being accompanied by no cheque or names of sureties, as required by the conditions named to tenderers as those on which offers would be received; it was also received at the Department some hours after the time advertized for the final receipt of tenders; it was higher than the one to which the contract was awarded.

The Minister being out of Ottawa at the time of opening these tenders, they were kept by Mr. Trudeau in a safe in his room till his return; and then the contract was awarded to T. & M. Kavanagh. The correspondence is printed in full in the above mentioned returns to the House of Commons.

The notification of the said award was by letter from Mr. Braun dated 25th November, 1879, and it requested Messrs. Kavanagh to deposit \$90,000 as security at or before 4 o'clock p.m., on the 8th December following.

On the 27th Messrs. Kavanagh acknowledged this communication accepting the contract, and stating that they would make the requisite deposit in due time.

On the 8th December, Messrs. Kavanagh wrote to the Minister, stating that Messrs. Davis & Sons had agreed to be associated with them, and to put

up their share of the security, but had unexpectedly that morning refused to do so, and they consequently requested two days longer to put up the security.

On the 9th December, the Minister reported to the Privy Council this circumstance amongst others connected with letting the works in British Columbia, recommending an extension of time to Messrs. Kavanagh until 4 p.m., on Thursday following (11th). The recommendation was adopted by an Order-in-Council, on 10th December, 1879. (Page 150 of the above mentioned return to the House of Commons.)

Before this extension expired Messrs. Onderdonk had arranged with Messrs. Kavanagh to take their position concerning this contract, and they, by letter dated the 11th December, formally notified the Minister that Mr. Onderdonk was authorized to take their contract for section D.

On the same day they applied for a further extension for two days, and it was granted by the Minister.

On the 12th December, the Minister reported to the Privy Council the circumstance of the transfer from Messrs. Kavanagh to Mr. Onderdonk, and the further extension of two days, recommending that authority be granted to enter into the contract with Mr. Onderdonk on Messrs. Kavanagh's tender.

A Committee of the Privy Council having advised that such authority be granted, an Order-in-Council was passed on the 13th December granting the authority asked for. (Page 152 of said return to House of Commons.)

On the day before this Order-in-Council was passed, Mr. Onderdonk had furnished the necessary security, and the contract was entered into with him on the terms stated at the opening of our report on this contract.

This contract and those numbered A and C were subsequently assigned by Mr. Onderdonk to a syndicate of capitalists, subject to the sanction of the Government, which was granted by Order-in-Council, dated 8th March, 1880. This is set out at page 197 of the said return to the House of Commons.

The Minister, as a witness, was examined concerning the extensions of time given in this case to Messrs. Kavanagh. After describing the steps in the proceedings to have been as set out in the correspondence (pages 148 to 151) in the said return to the House of Commons—namely, that they had mentioned to him persons upon whom they had relied for assistance in

making up the money, he explained to us that in this case there was no urgency as to time, and no object to be gained by passing to a higher tender.

The evidence shows that in awarding this contract the work covered by it was secured at the lowest rate at which the Department could have secured it, and that no undue advantage was obtained by the contractor.

In our report on contract No. 60 we give the tenor of some of the evidence concerning the advantage gained by placing the four sections in British Columbia in the hands of one strong and experienced firm. All the witnesses who were examined upon it agreed in the opinion, that the arrangement was a very desirable one for the Government.

There was little done under this contract at the date of our Commission, and nothing paid.

CONTRACT No. 64.

Pile Bridge over Red River.

By this contract, dated the 18th day of March, 1880, John Ryan, Charles Whitehead and Henry N. Ruttan undertook to furnish a pile trestle bridge over the Red River at Winnipeg, completed and ready to receive the rails on or before the 15th May, 1880. This contract was brought about to secure railway connection across Red River, and so to facilitate intercourse between the Pembina Branch and the town of Winnipeg and the country west of it. On the 3rd March, Mr. Schreiber being then at Winnipeg in the capacity of Superintending Engineer, Mr. Fleming telegraphed him as follows:—

“If you think it advisable and practicable while river is frozen to construct temporary pile bridge at Winnipeg, you can invite tenders, giving a week’s notice.”

On the following day Mr. Schreiber telegraphed this reply:—

“It is advisable in the interest of speedy construction westward to have a bridge; but what about its obstruction to navigation? If it is to be built the piles and timber must be delivered at once; but I do not consider it would be prudent to erect it until after the ice flows.”

On the 6th March, Mr. Fleming, having received authority, directed Mr. Schreiber to get out piles and timbers while the snow lasted; and, on the 10th of that month, Mr. Schreiber was requested to apply to the corporation of Winnipeg to allow a temporary bridge to be erected.

His suggestion to postpone the erection until the ice moved, was adopted by the Chief Engineer; but he was directed to obtain the materials without delay. Accordingly tenders were received on the 10th March, and a report was made on the subject on the 6th of April, the lowest tender having been, in the meantime, accepted under the authority of the Minister. Nine tenders were received. The lowest of them, at a price of \$7,350, was accepted and acted upon, and forms the basis of the present contract, which was awarded without any undue advantage to the contractor. The work has been completed and paid for without dispute. The sum expended up to the time of our Commission was \$2,700.

CONTRACT No. 65.

Rolling Stock.

By this contract, dated the 15th of March, 1880, James Crossen undertook to construct and deliver four first-class passenger cars, capable of carrying sixty-four passengers each, and one official car, all to be constructed and furnished according to specifications and at the prices below named. That portion of this contract which relates to the four cars above-mentioned, was brought about by an advertisement for tenders as follows:—

CANADIAN PACIFIC RAILWAY.

Tenders for Rolling Stock.

"Tenders will be received by the undersigned up to noon of Monday, the 23rd February instant, for the immediate supply of the following rolling stock:—

"4 First-class cars.

"2 Postal and baggage cars.

"60 Box-cars.

"60 Platform cars.

"Drawings and specifications may be seen, and other information obtained, on application at the office of the Engineer-in-Chief, Pacific Railway, Ottawa, and at the Engineer's Office, Intercolonial Railway, Moncton, N.B.

"The rolling stock to be delivered on the Pembina Branch, Canadian Pacific Railway, on or before the 15th May next.

"By Order,

"F. BRAUN,

"Secretary.

"DEPARTMENT OF RAILWAYS AND CANALS,

"OTTAWA, 7th February, 1880."

"The time for receiving the above tenders is extended one week, viz.: to Monday 1st March; and the time for delivery of a portion of rolling stock is extended to the 1st June.

"By Order,

"F. BRAUN,

"Secretary.

"19th Feb., 1880."

On the second of March, a report was made of the substance of the tenders ascertained at the opening by Mr. Trudeau and Mr. Braun. This report, in the shape of a schedule, shows that only two were made concerning first-class cars, one by James Crossen, offering to supply the requisite number at \$4,746, and one by the Ontario Car Company at \$4,890 each. The lowest of these tenders was accepted and the contract now under consideration was based upon the contents of that tender, without any undue advantage to the contractor.

After the acceptance of Mr. Crossen's offer for the first-class cars, it was thought desirable to obtain a contract for the supply of one official car. It had been originally intended to include this in the advertisement for tenders, but drawings and specifications could not be prepared in time to do so, and it was consequently omitted. As Mr. Crossen and the Ontario Car Company had made the only two tenders concerning first-class cars, it was not considered necessary to advertise again for a competition concerning this one official car. These two firms were invited to name the prices at which they would furnish it. Mr. Crossen tendered at \$5,977; the Ontario Car Co. at \$7,559; and on March 15th the Minister directed that the lowest tender should be accepted, by which act we think the contractor got no undue advantage.

No money had been paid on this contract up to the issue of our commission. The date named in the agreement for the completion of the contract was the 1st of June, 1880, at which time the cars had not been delivered.

CONTRACT No. 66.

Railway Construction.

By this contract, dated 3rd May, 1880, George Bowie and Malcolm McNaughton covenanted to complete, according to specifications, the works therein mentioned, including the excavation, grading, bridging, track-laying and ballasting on that portion of the line, commencing at the end of the 48th contract, near the western boundary of Manitoba, and extending to a point on the west side of the valley of Bird Tail Creek, in length about 100 miles, receiving therefor the respective prices affixed to the different items and classes of work mentioned in a schedule in the said contract, and subject to the condition, that if it should appear that the total sum therein named as the intended expenditure (\$438,914) would be exceeded at the

said prices, then the work might be stopped, and that no work beyond that total should be done by the contractor unless the Minister should first authorize it.

By the terms of the contract, the distance of fifty miles was to be in running order by 1st June, 1881, and the whole to be ready for passage of trains by 31st December, 1881.

The contract and specifications are printed in full (Sess. Papers (19 S.), 1880.)

Mr. George MacTavish, of Winnipeg, and Mr. Alexander Bowie, of Ottawa, were silent partners of the said George Bowie & Alexander McNaughton in this contract at the time it was executed, and in the tender on which it was founded.

Tenders were invited by the following advertisement:—

“CANADIAN PACIFIC RAILWAY.

“Tenders for a second 100 miles section west of Red River will be received by the undersigned until noon on Monday, the 29th March, next.

“The section will extend from the end of the 48th contract, near the western boundary of Manitoba, to a point on the west side of the valley of Bird Tail Creek.

“Tenders must be on the printed form, which, with all other information, may be had at the Pacific Railway Engineer's Offices, in Ottawa and Winnipeg, on and after the 1st day of March, next.

“By Order,

“F. BRAUN,

“Secretary

“DEPARTMENT OF RAILWAYS AND CANALS,

“OTTAWA, 11th February, 1880.”

“The reception of the above tenders is postponed until noon on Friday, 9th April, next

“By Order,

“F. BRAUN,

“Secretary.

“DEPARTMENT OF RAILWAYS AND CANALS,

“OTTAWA, 22nd March, 1880.”

On 12th April they were opened, and on the 13th they were reported upon as follows:—

“CANADIAN PACIFIC RAILWAY,

“OFFICE OF THE ENGINEER-IN-CHIEF,

“OTTAWA, 13th April, 1880.

“SIR,—A public advertisement of date 11th February, called for Tenders for a second 100 mile section west of Red River. The section to extend from the end of the 48th contract near the western boundary of Manitoba, to a point on the west side of Bird Tail Creek.

"The Tenders were opened yesterday in presence of the Deputy Minister, the Secretary of the Department and Mr. Collingwood Schreiber. A list is enclosed. There are twenty-six regular tenders, the conditions being complied with. There are four tenders without the required money deposit, therefore irregular, and in consequence ruled out.

"I have caused the moneying out of the twelve lowest tenders to be checked—those lettered G, B, Q, E, O, F, and A, prove correct. Tenders D, M, K, W, and C, are incorrect. Taking the revised total amounts, these twelve tenders stand in the following order: the lowest being letter D, of George Bowie and M. McNaughton, Ottawa, \$438,914, for the grading bridging and track-laying on the 100 miles, on the basis of the estimated quantities printed in the form of Tender.

	Revised Amount.
No. 1. Letter D, Geo. Bowie and M. McNaughton.....	\$438,914.
" 2. " G, Marpole, Oliver & Co.....	454,925.
" 3. " B, C. H. Carriere.....	482,361.
" 4. " M, Denis O'Brien.....	509,085.
" 5. " Q, Charlebois and Macdonald.....	511,032.
" 6. " E, Stevens, Burns and Turner.....	531,446.
" 7. " O, Peter J. Brown.....	545,735.
" 8. " F, James G. McDonald.....	557,390.
" 9. " K, J. C. Rodgers.....	560,472.
" 10. " W, F. Shanly.....	571,760.
" 11. " C, Stewart and Strachan.....	573,162.
" 12. " A, Stewart, Gray & Co.....	580,295.

"I have the honour to be, Sir,

"Your obedient servant,

"SANDFORD FLEMING,

"Engineer-in-Chief,

"The Hon. Sir C. TUPPER, K.C.M.G.,

"Minister of Railways and Canals."

On the day after the above report, Mr. Braun sent the following telegram to Mr. George Bowie, and a similar one to Mr. McNaughton, confirming it on the same day by a formal letter:—

"OTTAWA, 14th April, 1880.

"Your tender for the second hundred miles section, Pacific Railway, is the lowest and is accepted.

"You are hereby called upon to deposit to the credit of the Receiver-General within eight days of this date, 5 per cent. of the bulk sum of your tender, and are notified that should you fail to make such deposit your tender will be passed over and the cheque forwarded will be forfeited. Acknowledge immediately.

"F. BRAUN,

"Secretary

"GEORGE BOWIE, contractor,

"4 Plateau Street, Montreal."

These were acknowledged on the 15th, by Messrs. Bowie and McNaughton. The requisite security having been deposited on the 23rd April, the contract was entered into on the terms above mentioned.

The evidence shows that the Department awarded the contract, by accepting the lowest available tender, and without giving to the contractors any undue advantage.

An indenture dated 13th May, 1880, was executed between Mr. McNaughton, Mr. MacTavish and Mr. George Bowie before mentioned, by which it was agreed that Mr. McNaughton should transfer all his interest in the said contract to Mr. MacTavish, and that MacTavish should indemnify him against loss.

On the 14th May, Mr. MacTavish wrote to the Minister enclosing a copy of this indenture, and requested that his name should be substituted for that of Mr. McNaughton as the partner of Mr. George Bowie, or added as additional to theirs in the contract. He stated that he had provided from his own funds the \$22,000 which had been deposited as security, and gave this fact as the reason for his desire to be recognized as a principal in the contract.

On the 19th May, the Minister submitted a memorandum of these facts and a recommendation to the Privy Council, on which the following order was passed :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 22nd May, 1880.

"On a memorandum dated 19th May, 1880, from the Honourable the Minister of Railways and Canals representing that Mr; Malcolm McNaughton, of the firm of Bowie & McNaughton, contractors for the construction of the second 100 mile section of the Canadian Pacific Railway west from Red River, has executed a deed assigning to Mr. George MacTavish, of Winnipeg, all his right and interest in the said contract; and, further, that Mr. MacTavish has made application either for the substitution of his own name in place of that of Mr. McNaughton, or for the addition of his own name to that of the firm as now existing.

"The Minister states that considering that the public interest would be best served by the adoption of the second of the two alternatives proposed, he recommends that authority be given for the recognition of Mr. MacTavish as a partner in the firm of Bowie & McNaughton for the purposes of the said contract.

"The committee submit the above recommendation for Your Excellency's approval.

"Certified. J. O. COTÉ,

"Clerk, Privy Council."

Up to the date of our commission very little had been done, and nothing paid under the contract.

CONTRACT No. 67.

Rolling Stock.

By this contract, dated the 31st March, 1880, the Moncton Car Company, of New Brunswick, undertook to supply sixty box freight cars, and the same number of platform freight cars, according to specifications, by the 15th of June, 1880, at the price of \$690 each for the box, and \$490 each for the platform cars. This contract was brought about by the same advertisement to which we have alluded to in our report upon contract No. 65. The schedule concerning the tenders which were opened at the date named in the advertisement for their receipt, and signed by Mr. Trudeau, Mr. Smellie and Mr. Braun, shows that these contractors made the lowest tender for the platform cars, at the rate mentioned in the contract, \$490 each, and that their offer for the box cars was \$690 each, the price named in the contract; but one Simon Peters made a lower offer, namely, \$685 each for a number, between fifteen and thirty, of the box cars. Inasmuch as it would be necessary, even if the offer of Peters had been accepted, to take some of the cars from the present contractors, in order to furnish the requisite number, it was decided not to make a separate bargain with Peters for the sake of saving the difference of \$5 on the quantity he would deliver, and this led to the contract now under consideration, with the Moncton Car Company for the whole quantity required. There is no complaint upon the part of Peters that he was improperly passed over, and, in fact, a letter from him asking to withdraw his tender was produced before us. This left the offer of the present contractors the lowest one available to the Department, and we do not find that they obtained any undue advantage in the award of the contract.

At the date of our Commission the contract had not been fulfilled, and no money had been paid upon it. The amount involved was \$70,800.

CONTRACT No. 68.

Rolling Stock.

By this contract, dated the 8th of May, 1880, the Ontario Car Company, of London, undertook to deliver two postal and baggage cars at the rate of \$3,115 each, according to specifications, on or before the 1st of June, 1880. This contract arose out of the advertisement referred to in our report on contract No. 65, and the schedule of the tenders, dated March 2nd, and signed by Mr. Trudeau, Mr. Smellie and Mr. Braun, as above mentioned,

shows that two tenders were received for these articles, one by the present contractors and the other by Mr. Crossen, the offer of the latter being \$3,303 each. The lowest offer was accepted, and this contract was based upon it without giving the contractors any undue advantage. The amount involved in this contract is \$6,230, but nothing had been paid upon it up to the date of our Commission.

CONTRACT No. 69.

Transportation of Rails.

There is no formal contract in this case. In the summer of 1879, the North-West Transportation Company had contracted to carry 11,000 tons of rails at \$16 per ton from Montreal to Manitoba for Mr. John Ryan, the contractor on section 48, for which section he had undertaken to transport the rails from Montreal, and this company had also a contract with the Government (No. 52) to transport 4,000 tons of rails from Montreal to Fort William at \$6 per ton.

Late in the autumn of 1879, it was found that the makers in England were sending to Canada more rails than the 15,000 tons which were expected, and these contractors were directed by the Department to carry those charged against this contract at the same rate as that paid on Mr. Ryan's lot.

Mr. Trudeau testified that, taking as a basis the previous contracts by which the same work had been performed (22 and 34) this arrangement saved \$3.30 per ton.

The Chief Engineer made a report on this transaction, and the 4,000 ton contract to Fort William, from which the following is extracted :—

"Late in the summer 3,000 tons in addition to the 4,000 tons arrived at Montreal, and it was necessary to have them removed from the wharves and forwarded. Mr. Beatty was the only party available for this purpose, and he offered to take them to Emerson at the same rate as he had contracted to convey 11,000 tons for contractor John Ryan. This offer was informally accepted, and Mr. Beatty acted on the acceptance, but no payments have yet been made, as the sum is large. Before certificates are issued, it would be necessary to have the undertaking for the transportation of the 3,000 tons confirmed and approved."

Mr. Fleming testified that, in his opinion, the arrangement was quite a desirable one, and that he had no reason to think the work could have been done at a cheaper rate.

Upon the evidence we conclude that the Department could not have got the work done at a cheaper rate, and that in this case the contractor got no undue advantage.

On the 14th June, 1880, an Order-in-Council was passed confirming the arrangement, and before 30th June, 1880, \$16,100 was paid under it.

CONTRACT No. 70.

Transportation of Rails.

By this contract dated 25th May, 1880, the North-West Transportation Company undertook to transport from Montreal all the steel rails and accessories expected to be received by the Government from England during that season, part to Emerson and part to Fort William, in such proportions as might be directed, at the rate of \$5 per ton to Fort William, and \$14.50 to Emerson.

Public competition was invited by the following advertisement :—

“CANADIAN PACIFIC RAILWAY.

“TENDERS FOR TRANSPORT OF RAILS AND FASTENINGS.

“Sealed tenders, addressed to the undersigned, and endorsed ‘Tenders for Transport,’ will be received up to noon of Saturday, the 8th day of May next, for the transport of about 23,000 tons of rails and fastenings—about one-half to be delivered on cars at Emerson, and the remainder at Fort William—during the season of 1880.

“Forms of tender can be had and other information, on application at the office of the Engineer-in-Chief, Ottawa.

“By order,

“F. BRAUN,

“Secretary.

“Department of Railways and Canals,
Ottawa, 23rd April, 1880.”

On the 14th May, the Minister submitted to the Privy Council a memorandum showing the substance of the tenders, and recommending the acceptance of that made by the present contractor. This was the lowest of the tenders which had according to the terms of the advertisement, proposed a contract for the whole quantity, part to be delivered at one point and part at another.

G. E. Jacques & Co. had named a rate $12\frac{1}{2}$ cents lower than these contractors for delivery at Fort William, but no rate for Emerson.

Before closing the contract the following Order-in-Council was passed :—

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 15th May, 1880.

"On a memorandum, dated 14th May, 1880, from the Honourable the Minister of Railways and Canals, reporting that tenders having been called for the transport of 23,000 tons of rails from Montreal to Emerson, and to Fort William, the following have been received :—

Section.	Name.	Montreal to Emerson.	Montreal to Ft. William.	—
		\$ cts.	\$ cts.	
A	R. D. Van Allan & Co., Chatham	6 00	3,600 tons.
B	A. M. Smith and W. H. Keighley, Toronto	15 25	5 25	
C	James Norris, St. Catharines.....	17 60	.....
D	G. E. Jacques & Co., Montreal.....	.....	4 37
E	MacPhie, St. Lawrence & Chicago Forwarding Company	16 25	4 75	
F	A. McIntyre Thom, Montreal.....	15 50	4 50	
G	Cooper, Fairman & Co., Montreal.....	15 90	4 65	
H	Henry Beatty, Sarnia.....	14 50	5 00	

"That the form upon which the above tenders were based states as follows :—

"The quantity expected from England is about 23,000 tons in all, and the present intention is to send about one-half thereof each to Emerson and Fort William."

"That upon this basis the tender of Mr. Henry Beatty is the lowest received, and he, the Minister, accordingly recommends its acceptance.

"The Committee submit the above recommendation for Your Excellency's approval.

"Certified,

"J. O. COTÉ,

"Clerk, Privy Council."

After which the following notification was sent by telegram to Mr. Beatty, and the contract was afterwards executed accordingly :—

"(Telegram.)

"18th May, 1880.

"Your tender for transport of rails from Montreal to Emerson and Fort William respectively, is accepted.

"F. BRAUN,

"Secretary.

"To HENRY BEATTY, Sarnia."

The evidence shows that the Department accepted the lowest offer made for the work submitted to competition, and that the award of the contract gave no undue advantage to the contractor.

Nothing was paid on it up to the 30th June, 1880.

This was the last contract entered into before the issue of our Commission.

MR. THOMAS NIXON, PURVEYOR AND PAYMASTER.

In the spring of 1875, Mr. Thomas Nixon was appointed Paymaster and Purveyor, at Winnipeg, for the Canadian Pacific Railway. He had an office there in which he transacted his official business. He was also entrusted with powers in connection with the Mounted Police and the Indian Department somewhat similar to those which concerned the railway. In his official character he dealt with matters relating to these three distinct branches, and in doing so controlled a large expenditure. He kept, however, separate books relating to the disbursements for the railway, of which the aggregate was about half a million of dollars, and we were thus enabled to confine our enquiry to the moneys paid through his office on this account.

His duties towards this undertaking included the purchase of different kinds of goods required for persons engaged on the work, engineers, their subordinates and others, and he also took part in the payment of moneys which were placed by the Government under his partial control. These amounts were remitted from Ottawa from time to time to a bank agency at Winnipeg, in the form of credits to his official account as paymaster and purveyor, and were subject to be paid out on cheques signed by him and countersigned by another officer also stationed at Winnipeg and known as "Auditor."

The practice generally followed concerning the disbursement of this fund, was that persons having claims upon the matters within the jurisdiction of Mr. Nixon would present their accounts to him and obtain his cheque for the whole, or such part of it as he was willing to pay. This account, together with the cheque, would be presented afterwards to the auditor in order that he might supervise the demand and the payment of it.

Mr. Drummond, who was Auditor at Winnipeg from the time that the office of the purveyor was opened, describes his duties to have been to receive the account of each claim in triplicate, together with such certificate as he would consider sufficient to establish the correctness of the demand, and then to countersign the cheque, keeping one copy of the account and transmitting the other two to Ottawa

In recounting the circumstances of the early transactions through his office, Mr. Drummond stated, that they were not investigated or recorded by him with as much strictness as afterwards; that it was, however, always intended, that each item of each claim should be supported by some memorandum from the officer of the railway acquainted with the fact of the supply having been furnished as stated in the account.

As to several accounts which were passed by him as sufficiently vouched, and covering many different claims by a Mr. Alloway for horses furnished for the use of engineers and others engaged on the railway, the Auditor countersigned the cheques without any evidence of the correctness of the accounts, beyond Mr. Nixon's signature to the cheque. There seems no reason to doubt that the system thus devised for the disbursement of Government moneys, requiring each cheque to be signed by two independent officers, has had the effect of ensuring the payment of all of it to the persons who made the respective claims on which it has been paid out, but we feel it necessary to point out some of the transactions which gave rise to claims satisfied from this fund, as well as other matters concerning the course of dealing between Mr. Nixon, and persons accustomed to furnish supplies on his order as purveyor.

In his official character, Mr. Nixon agreed on behalf of the Government to pay a specified rent to a Mr. Strang, who held the title of a building and lot occupied with stores under the charge of Mr. Nixon. The property was owned, during the whole period, by Mr. Nixon, the title to it having passed to Mr. Strang in pursuance of an arrangement between them by which Mr. Nixon was afterwards to assume the character of tenant in the interest of the Government, and Mr. Strang that of a proprietor interested in the receipt of rent. The rents were paid out of the Government moneys and went to Mr. Nixon's private use, at the rate of \$360 per annum on a property worth about \$2,000.

We have taken evidence concerning his mode of dealing with persons accustomed to furnish supplies through him to the Government, and it points to the conclusion that Mr. Nixon wished to obtain from Mr. Peter Sutherland, a person who had supplied articles on the official order of Mr. Nixon, the positive discharge of an uncontested claim of about \$900, due by Mr. Nixon on his private account to Mr. Sutherland; that subsequently the claim was partially paid, and a balance of about \$300 was left unpaid, because of the relation of Mr. Nixon to the Government, and the power in his hands to order or decline to order supplies from Peter Sutherland.

In the course of Mr. Nixon's duty he provided a considerable number of horses for different services connected with the railway, nearly all of which were furnished under arrangements between him and Mr. Alloway. The accounts filed at Ottawa, after having been settled under the process above described, showed us that Mr. Alloway had not given detailed particulars concerning some of the large lots for which he had been paid, and both Mr. Nixon and Mr. Alloway were examined by us concerning those transactions.

Mr. Alloway was a dealer in horses, and in his evidence stated that most of those procured through him were bought on a commission paid to him as an agent for the Government, and a few by Mr. Nixon purchasing them direct from him.

Mr. H. A. F. McLeod had charge, in the year 1875, of the instrumental surveys between Fort Pelly and Jasper Valley, and the explorations in the Rocky Mountains; under him Mr. Lucas had charge of party P, on a survey from Fort Pelly, and Mr. Ruttan of party L, on a survey eastward from a point near Root River; Mr. McLeod himself exploring the country in advance of Mr. Lucas' party.

Mr. McLeod, on the 13th April, 1875, filed with Mr. Nixon a requisition for eight half-breed horses, together with carts, harness, &c., to be used for transportation of supplies for party P, and for similar service for party L, a requisition for thirty half-breed horses, together with carts, &c.; he also filed another requisition on 27th April, 1875, for five additional horses and carts, saddles, &c., for a similar service for his exploring party; and on the same day Mr. Lucas filed a requisition, "approved" by Mr. McLeod, for two horses and English saddles, one for the Engineer and one for the Assistant Purveyor for party P.

We do not find in Mr. Nixon's "requisition book" any further request for horses until July, 1875, and we are, therefore, led to understand that the facts above mentioned give some indication of the kind of horses which were to be bought, *i.e.* thirty-eight half-breed horses, two saddle horses, and five not specially described.

At that day there was a difference in the price of half-breed horses and those of the larger size, such as imported horses. Mr. Alloway said that cart horses of the native breed would be worth at that date about \$90.

Mr. Nixon testified that the horses bought from Mr. Alloway were mostly half-breeds, and that half-breed horses could be bought "from \$40,

\$60, \$80 to \$100, a \$100-horse would be a very good one," but that they varied so much in quality, that it would be impossible to give an average.

Mr. Augustin Nolin, an old settler who had been engaged with teams in transportation, and in carrying mails, was a witness before us. He said his special business had been buying and selling horses; that \$50 would be about the price, in 1875, of a good cart horse, "that you would buy if you were going to load them to the base of the Rocky Mountains;" that at that time horses were not very dear at Winnipeg, and that except for horses with "a pedigree, or some peculiar qualities, such as trotters," he did not know that more than \$50 would be paid.

The following were the first three accounts paid to Mr. Alloway, including his commission, and they were satisfied by Mr. Nixon's giving an official cheque on the purveyor's fund, kept as before described, and these cheques were countersigned by the Auditor, though the accounts were not certified by any Engineer or other person, having been paid by Mr. Nixon, apparently because of his own knowledge of the price which Mr. Alloway had paid out as Government Agent.

" WINNIPEG, 6th May, 1875.

" Canadian Pacific Railway Survey, Dr.,

" To W. F. Alloway,

" To 18 horses, averaging \$90.75 each..... \$1,633 50

" To my commission on purchasing the same at 5 per cent. 81 67½

\$1,715 17½

" May 7th, 1875,

" Received payment per cheque,

" W. F. ALLOWAY."

" WINNIPEG, 17th May, 1875.

" Canadian Pacific Railway Survey, Dr.,

" To W. F. Alloway,

" To 18 horses, averaging \$116 each..... \$2,088 00

" To my commission on purchasing same at 5 per cent..... 104 40

\$2,192 40

" Paid by cheque,

" W. F. ALLOWAY."

" WINNIPEG, 21st May, 1875.

" Canadian Pacific Railway Survey, Dr.,

" To W. F. Alloway,

"Two horses at \$157.50 cash.....	\$315 00
To commission on same at 5 per cent.....	15 75

—————
\$330 75

" Paid by cheque,

" W. F. ALLOWAY."

Mr. Nixon said that in nearly every instance he had himself fixed upon the prices of these animals. That at the time of closing the matter he had a detailed statement of each horse and its cost. That he had it from Mr. Alloway's books which showed "the person from whom the horse was bought, and the price paid, and the description of the horse, bay, or grey, or roan—mare, horse, or gelding, as the case may be." That he had employed Mr. Alloway to buy the horses, and knew the price, and he (Mr. Alloway) could not cheat him. That he presumed he had not kept any record, because he depended on Mr. Alloway's record.

Mr. Alloway said that at that time he did not keep books, having no book-keeper, but kept a sort of memorandum in a pocket diary; he used one up about every six months, and he did not know whether he had destroyed them or not. Upon being recalled he said he had looked for the books; that there had been but one pocket-book and a diary, "and it was only in one," and that he could not find it—that one book had covered the whole time of these transactions; it was "a pocket diary, about three inches by five." He said that he might have bought on commission for the Government less than 100 horses; that if several were to be bought for an engineer's party, the Engineer would exercise his judgment as to whether they were fit; in the case of one, Mr. Nixon would exercise his judgment. Speaking of the first lot he said they were ponies, and on looking at the account for them, he said Mr. Nixon had taken part with him in "bargaining with the individuals," from whom they were purchased, not invariably but generally; that Mr. Nixon was cognizant of each bargain before a horse was bought; and that in this account they were lumped—eighteen horses at \$90—"because that was the price paid for them, and he (Mr. Nixon) said to make the account in that way and he would agree to it." That he thought the certification of accounts "was an institution of a later date."

He also thought the transaction of 17th May was accomplished in the same way as the former one; and he supposed also the other of 21st May.

Throughout these dealings Mr. Alloway was supposed to be buying for and on behalf of the Government, and to be paid a commission for his judgment; but we could get no information as to the persons from whom the horses were bought, or the separate prices paid for them or any of them. Neither Mr. Nixon nor Mr. Alloway thought it advisable to preserve any record of those particulars.

On the 17th April, 1878, Mr. Nixon was examined before the Select Standing Committee of the House of Commons on Public Accounts; the evidence which he then gave concerning his transactions with Mr. Alloway in the purchase of horses is set out at page 1830, of the second volume of Evidence accompanying this report. He there testified that he had paid Mr. Alloway no commission, and the tenor of his evidence on that occasion appeared to us to be, that his knowledge of the particulars of any of the purchases of horses by Mr. Alloway was very exceptional. As this was different from the impression left by his evidence before us, we afterwards submitted to him an interrogatory, asking for an explanation of what seemed to be an inconsistency. His answer to the interrogatory (No. 2) is set out on page 1831, of volume II, of the Evidence.

Mr. Nixon stated in evidence that he had at no time endorsed any paper for Mr. Alloway. He was recalled and informed, as was the fact, that a banker had testified before us that entries of negotiable paper had been found in the books of the bank, bearing the name of Mr. Alloway as promisor, and Thomas Nixon as endorser, and that it had been discounted for Mr. Alloway, in November, 1875. He said that it could be explained by the fact that at that time there was another Thomas Nixon in Winnipeg. The same banker was recalled, and said that he was the person who had decided on the discount, and that there was not at any time any other Thomas Nixon than the one in question, whose name would have been taken by him; this was also mentioned to Mr. Nixon, who had been again recalled; he adhered to his former statement. We think the evidence shows that during the time he was, as Government Purveyor, dealing with Mr. Alloway, he had endorsed his paper, and that Mr. Alloway had raised money on their joint liability.

The first three lots of horses, in all thirty-eight, nearly all of the native breed cost the Government an average over \$111. Other horses were afterwards bought at a much higher price, averaging as far as the purchases have come to our knowledge over \$140.

The whole evidence concerning purchases by Mr. Nixon, through Mr. Alloway as an employe of the Government and from other persons, leads us to believe, that his method of management resulted in the payment of a higher price, than was necessary, for property purchased by him on Government account.

In addition to the duties above mentioned, it was the duty of the Purveyor to take charge of the stores, animals, &c, belonging to the Government, both before they were supplied to persons employed upon the railway, and afterwards if any of them should be returned to his custody, and, if necessary, to re-issue the same if they should be again required for purposes connected with the undertaking. Also, if any of the Government property which had been employed for railway purposes should be disposed of, to receive the proceeds and pay over the same to the credit of the Receiver-General. These payments were to be made in such a way as not to interfere with the debits or credits concerning the amounts which were remitted from time to time, as aforesaid, from Ottawa to the official account of the Purveyor at Winnipeg, but were made so as to appear only in a separate account kept in the name of the Receiver-General, at one of the banks. At times an officer was attached to parties on surveys or otherwise employed for the railway, called a sub-agent or commissariat officer. Mr. Nixon, on requisitions furnished these sub-agents with money, and with goods to be disposed of in satisfying on the spot, men who had claims against the Government for services or otherwise.

Mr. Nixon was allowed to employ a book-keeper or accountant, and at the beginning of his duties he retained a Mr. Conklin in that capacity. A special set of books for the railway was opened by Mr. Conklin under the direction of Mr. Nixon. In addition to this set of books, a Mr. Parr, who was in charge of the store-house, had a book known as the "Store-house book." This was in no way under the management of Mr. Conklin. One of the books kept by Mr. Conklin dealt exclusively with the moneys sent from Ottawa, and deposited in the bank, to the official account of the Purveyor and Paymaster, as before mentioned. This showed the several amounts which were furnished by the Government from time to time, and each cheque on which any part of it was paid out. This book is apparently correctly balanced. In all other respects the books in the Purveyor's office and in the store under his charge, were for the first eighteen months so kept that no trace can be followed of large transactions managed by Mr. Nixon.

From time to time sales of Government property took place at points distant from Winnipeg, and the proceeds were remitted to Mr. Nixon. These proceeds were not made payable to him in his official character. He received them sometimes with and sometimes without the knowledge of his book-keeper. He did not pay them at once into any official account. If they were deposited in any bank it was to his private credit and mixed with his own moneys. He rendered to the Government at different times accounts purporting to show all moneys received by him from such sources, and he paid to the credit of the Receiver-General the amounts exhibited as due from him by such accounts. Whether the accounts so rendered by him showed correctly all moneys which he had received from the sources above mentioned or not, cannot be ascertained from the books or papers which he finally transferred to the custody of the Government at the end of his duties. He said, in his evidence, that he had had large funds from other sources at his command during the period of his official connection with the railway, and that these funds had been mixed up with those which he had deposited, as aforesaid, in his private bank account, and that for that reason his bank book would not give us any light upon the subject. He further testified that he was not able to suggest any method by which a correct statement could be ascertained, except in so far as the returns which he had made on the subject to the Government would give it; but that he believed those returns were correct and sufficient.

During his examination he said that entries on this subject ought to have been made in the books by the accountant; but that he had never directed him to do so. The accountant in his evidence said that he was led by Mr. Nixon to understand that the books were not intended to show these matters, and we found, as a fact, that there was no collected account in the ledger or other book concerning them.

Mr. Conklin having been succeeded by Mr. Currie, as accountant, in May, 1877, it became necessary to get the accounts, which had been kept by Mr. Conklin, balanced so as to start a set of new books with a clean sheet. The accounts which had been opened with different individuals in Mr. Conklin's books could not be balanced within about \$26,000, according to the entries then found in them; and for the purpose of commencing the new set of books, the accounts in the old ones were closed by entries to make them even. This was done because Mr. Nixon said to the new book-keeper that the old accounts had been settled. Besides these so closed, others

appeared unbalanced, of which nothing could be stated, and in order to make the debit side, in the old set of books, equal with the credit side, a fictitious balance of about \$4,400 was entered on one side of the balance sheet.

The store was in charge of Mr. Parr, and besides the goods left with him from time to time, he took the custody of animals returned from different parties until they were disposed of or sent out again for use. Goods, he says, were always entered in a book kept by him in the shape of a memorandum, without any value being attached. Sometimes animals were entered and sometimes not. Goods going out were entered in some shape. Occasionally he was directed to prepare returns of the property on hand for the information of the Government, and he would make one ready for transmission by Mr. Nixon. He testified that on such occasions he would take down what property "his eyes could see," but he never compiled any return derived from a statement of what had gone into his custody and what had gone out.

Excepting the statement of moneys received from the Government and paid out by cheques countersigned by the auditor, the books under the control of Mr. Nixon fail to give a proper clue to the amount of public moneys which reached his hands, and the account of the stores which came into his control is incomplete and unsatisfactory.

It was impossible to ascertain, by calling witnesses before us, the nature or extent of the omissions, if any, in the books kept by Mr. Conklin. Many of these witnesses had been scattered over different parts of the country, and we did not conceive it to be our duty to ascertain exactly the state of accounts between Mr. Nixon and the Government.

From the character of the record of Mr. Nixon's transactions, we have to report that there has been an entire absence of that care by the officer, and of that supervision of his conduct and accounts by his superiors, which generally prevails in business matters, and without which, in our opinion, no business of any importance can be successfully maintained.

FORT FRANCES LOCK.

In consequence of most of the principal matters relating to the Fort Frances Lock having been made the subject of an enquiry, and a report by the Senate in April, 1878, we have deemed it desirable to confine our attention to the manner in which the expenditure was made upon this work.

The expenditure was authorized and directed by the Department of Public Works. Mr. Hugh Sutherland was appointed Superintendent, and on 11th May, 1875, directions to commence work were transmitted to him by letter from the Secretary.

The system under which the works were carried on, and the moneys disbursed was as follows: Mr. H. Sutherland, as Superintendent or Manager had primary charge of the undertaking, except as to engineering questions, which were determined by the visiting engineer. For the purchase of supplies and the general direction of the work he was primarily responsible, subject only to Departmental instructions. Mr. Matthew Thompson was appointed by him as foreman, and was responsible for the practical carrying out of the work under Mr. Sutherland's directions. In the absence of the Superintendent it became his duty to look after the necessary supplies and perform those duties, in addition to his own, which would have devolved upon Mr. Sutherland had he been present.

Under Mr. Thompson, Mr. R. R. McLennan directed the rock work, and Mr. Warren Oliver the timber work.

Mr. Logan was appointed Paymaster and Storekeeper, and all payments made at Fort Frances on account of the lock were by cheques drawn by the Paymaster and countersigned by the Superintendent.

The books were kept by Mr. James Sutherland, a brother of the Superintendent.

Mr. Hugh Sutherland stated, in evidence, that while in charge of this undertaking he was also supervising the erection of certain public works at Fort Pelly and Battleford, so that he was able to make only periodical visits to the Fort Frances work.

The engineering supervision was directed by Mr. Mortimer, whom Mr. Sutherland understood to be acting under the general directions of Mr. Hazlewood. No engineer, however, devoted his whole time to the work; in fact, Mr. Sutherland is of opinion that no engineer was present on an average more than one day a week.

As a rule the supplies were ordered by the the Superintendent, and the receipt of the goods so ordered, having been certified to by the paymaster, the invoices were transmitted to Ottawa for payment by the Department. Sometimes goods were procured from Mr. Bethune, Government purveyor at Prince Arthur's Landing, and occasionally small quantities were purchased and paid for by the Superintendent himself; this, however, was exceptional.

On arriving at Fort Frances, Mr. Sutherland states that he found there was but one store, that of the Hudson Bay Co., and the men engaged upon the work complained of their high charges. On this account a Government store was opened under control of Mr. Logan, the paymaster, assisted, in turn, by Messrs. Marr, Bentley and Wilson.

On account of rumours which were rife as to certain alleged improper transactions made particularly in connection with this Department of the undertaking, a close enquiry was made into those matters. Mr. Wilson, one of the assistant storekeepers, (to whom the Government stock was subsequently transferred), and to whom several of the said allegations referred, was examined closely. We found that a proper store account had been kept in which the workmen were charged with whatever they got, and these accounts being periodically made out and handed to the book-keeper, the amounts were debited to the men's accounts in the general books, and went in diminution of their wages accounts. The general books, kept by Mr. James Sutherland, were, at our request, handed over to our keeping. We have examined them with care and find them to have been kept upon approved business principles, and in creditable style.

In 1877 Mr. Wilson purchased the stock then on hand in the Government store at invoice prices, the cost of transport being added upon such of it as Messrs. Thompson and Logan deemed to be merchantable, and thenceforward he carried on business in another building as a private concern.

The goods thus purchased amounted to some four thousand dollars. He produced his private books, and certain entries therein were the subject of a thorough examination. From the evidence given and the manner in which it was offered, we are of opinion, that the transfer was a fair and legitimate business transaction.

A Government store for provisions was still kept by the paymaster, after the stock of furnishings was sold to Mr. Wilson, and when work ceased upon the locks in the fall of 1878, the goods then unsold and the plant used upon the said works were turned over to Mr. Fowler, together with an invoice of the same—the whole being valued at some \$20,000. These, it is understood, are held by him in charge for the Department of Public Works.

Nothing which transpired in evidence led us to think that any moneys furnished by the Government had been misapplied.

The principal portion of the evidence not susceptible of direct corroboration was the alleged receipt by employes of the amounts stated in the pay-lists. These included large numbers of persons, many of whom were Indians. The correctness of these documents was upheld by the evidence of both Mr. James Sutherland whose duty it was to prepare them from the data furnished by the time book, and by Mr. Thompson, the foreman, who said that he invariably examined them before the men were settled with. Moreover, no exception seems to have been taken to them as vouchers by the officers of the Department, at Ottawa.

We are of opinion, from the general tenor of the evidence, that the funds entrusted to Mr Sutherland in connection with the Fort Frances Lock were expended in obedience to the general instructions received from Ottawa, and there is no reason to suppose that the method of managing the works and the expenditure in connection therewith was objectionable, or failed to exhibit correctly the transactions of the Government officials there employed.

The amount expended upon the works up to the 30th June, 1880, was \$289,028.51.

MESSRS. COOPER, FAIRMAN & CO.

We have taken evidence with a view of ascertaining the persons who constituted this firm during the period of their dealing in matters connected with the Pacific Railway.

According to the records under the charge of Mr. Ryland, a Registrar in Montreal, Messrs. James Cooper, Frederick Fairman and Charles Mackenzie became partners under the style of Cooper, Fairman & Co., on the first day of January, 1873, and agreed to be partners until the first day of January, 1878. The following is a certificate obtained from the proper officer:—

“ Province of Quebec, }
District of Montreal. }

“ We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of Cooper, Fairman & Company, as merchants, which firm consists of James Cooper, of the city of Montreal, Frederick Fairman, at present residing at Waterloo, in the said Province, as general partners, and Charles Mackenzie, of Sarnia, in the Province of Ontario, as a special partner, the said Charles Mackenzie having contributed fifteen thousand dollars to the capital stock of the said partnership, which said co partnership commenced on

the first day of January, instant, and terminates the first day of January one thousand eight hundred and seventy-eight.

"Dated this second day of January, one thousand eight hundred and seventy-three.

"JAMES COOPER,

"FREDERICK FAIRMAN,

"CHARLES MACKENZIE.

"Signed in the presence of

"JOHN C. GRIFFIN, N.P."

"I certify that the foregoing is a true copy of a declaration which was entered and registered at full length in the Registry Office, for the Registration Division of Montreal in Register D. C., vol. 3, page 26, at ten o'clock in the forenoon of the seventh day of January, eighteen hundred and seventy-three, under the number 5,619, G. H. R.

"G. H. RYLAND,

"Registrar."

Mr. Charles Mackenzie was a special partner, having contributed fifteen thousand dollars to the capital of the firm, upon the understanding that each partner should receive one-third of the profits, and that Mr. Mackenzie should not be answerable for the liabilities of the firm beyond the capital which he had contributed. He said, in giving evidence, that after this firm had secured the contract for steel rails he decided and told his partner, Mr. Cooper (in Toronto) that he would retire from the partnership; that this was the first notification on this subject to any of his firm, inasmuch as he had not thought it necessary that his intention should be communicated at an earlier day by writing; that Mr. Cooper, then in Toronto, informed him that Mr. Fairman was in England, and that consequently a dissolution could not be accomplished until his return; that immediately after Mr. Fairman's return in the spring or summer of 1875, Mr. Mackenzie went to Montreal and dissolved the partnership, papers for that object being then drawn up and signed; that either at the first-mentioned interview with Mr. Cooper, he (Mr. Cooper) had proposed, or subsequently when Mr. Cooper and Mr. Fairman were present, they both had proposed to return him his capital, that is \$15,000, by three notes of \$5,000 each, and that without any discussion as to the terms upon which he should leave the partnership, it was agreed that he should get his whole capital returned to him.

Mr. Cooper's recollection differs from Mr. Mackenzie's on the subject of the time of the first notification that Mr. Mackenzie wished to retire from the partnership. Mr. Cooper thinks he received it at Montreal in writing, but is not positive. Mr. Cooper described the partnership as ending on the 31st December, 1874, saying that the understanding of the dissolution

was that it took place at the end of the year, and he suggested October or November as the time at which he had received the notification of Mr. Mackenzie's intention to withdraw. Mr. Cooper is clearly wrong in this suggestion as to the time, for the first award of the contract to his firm was on the 2nd day of December, 1874, and it was after that, when Mr. Charles Mackenzie told Mr. Cooper he intended to go out of the firm. Again the evidence shows that when Mr. Mackenzie proposed to retire no arrangement could be finally concluded, because Mr. Fairman was in England, and a letter written by Mr. Fairman himself, in the name of the firm, to the Minister of Public Works, dated 4th December, 1874, states that Mr. Fairman would start for England on the Monday following. Therefore the intimation by Mr. Mackenzie to Mr. Cooper, at Toronto, was at the earliest some time after the 5th December, 1874. This is assuming that Mr. Fairman was on the ocean; for if he was really in England as above stated, Mr. Mackenzie's notification to Mr. Cooper must have taken place as late as the 15th December.

Mr. Cooper, in his evidence, said that the dissolution could not be arranged in "October," (meaning the time of the notification), while the business was going on; that it could not be done until the firm should close the books, take stock, &c.

The evidence makes clear to our judgment that about which Mr. Charles Mackenzie seemed uncertain, namely, whether it was when only he and Mr. Cooper were together at Toronto, or after Mr. Fairman had returned from England, and when the three partners were together, that it was proposed that he should get back his whole capital of \$15,000. In the first place it is not probable that Mr. Cooper and he, in the absence of Mr. Fairman, and without his consent, would arrange the terms of a dissolution and the withdrawal of a definite sum from the capital of the partnership; and in the next place it is proved that closing the books, taking stock, &c., was a thing necessary to be done in view of the intended dissolution, and that this took place not earlier than some time in January, 1875; therefore, we think the proposition to give Mr. McKenzie \$15,000 (the amount of his original capital) was made when the three were together, after Mr. Fairman's return from England, and after the stock-taking had been concluded.

If from the beginning of the negotiations for dissolution the intention was to give Mr. Mackenzie his capital back intact, and without reference to the profits or losses of the business, then the dissolution could have been accomplished without stopping the business to close the books, take stock, etc. The

manner in which both Mr. Cooper and Mr. Fairman alluded to this feature of the case, inclines us to think that closing the books and stock-taking did take place as a matter material to the terms, on which Mr. Mackenzie finally retired. But it does not therefore follow that no binding agreement for dissolution took place until the books were actually balanced and stock actually taken, for though the result shown by the books and taking stock may have had a bearing on the amount to be finally paid to Mr. Mackenzie, a positive agreement could have been closed between the parties before those results became known, and on a basis which would provide for the prospective payment to Mr. Mackenzie being more or less according to the results as subsequently shown.

It is obvious, however, that until the minds of the three partners were in accord no agreement for dissolution was arrived at. Up to that time, whenever it was, all notices, negotiations and estimates could be nothing more than features of proposals made by one or more of the firm.

Mr. Fairman stated in evidence that he thought he returned from England about April, 1875; that shortly after his arrival in England he received advices that Mr. Mackenzie wished to retire from the partnership, and that on or about the 1st January, 1875, he wrote to Canada assenting to this proposition; that stock was taken in January, and formal agreements were executed after his return to Canada.

We think it may be assumed, that the letter conveying this assent of Mr. Fairman would reach Canada about the middle of January, 1875, if sent when Mr. Fairman stated it was.

We do not think the terms of the dissolution of this firm a matter material to our investigation, except in so far as they aid in the attempt to ascertain the time at which the act itself of dissolution, or the mutual agreement for the dissolution took place. The partnership had not been formed on the condition that Mr. Mackenzie, might at his option, select a time at which he would go out of the firm, withdrawing his capital, or on any other definite terms, therefore some mutual agreement on the terms became indispensable. The evidence as a whole tends to the view that some time in January, 1875, not earlier than on or the about 15th, the three partners were in accord on the main fact that a dissolution should take place, and that closing the books and stock-taking thereafter, would be a means of settling upon the amount to be paid to Mr. Mackenzie.

The following is a certificate of the record of dissolution :—

"Province of Quebec, }
District of Montreal. }

"We, the undersigned James Cooper and Frederick Fairman, both of the City and District of Montreal, general partners, and Charles Mackenzie of Sarnia, in the Province of Ontario, special partner, do hereby certify and declare that the limited partnership heretofore subsisting between us under the style and firm of Cooper & Co., registered in the office of the Prothonotary and Registrar at Montreal on the seventh day of January, A.D. 1873, hath been dissolved from the fourth day of May last, and we make this declaration to the end that such dissolution may be legally registered as we supposed had been already done, we having, some months since signed a similar declaration, and entrusted it to our agents for the registration; and we have signed.

"Sarnia, 11th November, 1875.

"CHAS. MACKENZIE.

"JAMES COOPER.

"F. FAIRMAN.

"Witness,

"GEO. H. GRUNDY,

"Montreal, 17th November, 1875.

"I certify that the foregoing is a true copy of a certificate and declaration which was entered and registered at full length in the Registry Office for the Registration Division of Montreal, in Register D.C., vol. 3, page 427, at twelve o'clock at noon on the seventeenth day of November, eight hundred and seventy-five, under the number 7,279, G. H. R.

"G. H. RYLAND,

"Registrar."

The evidence leads us to conclude that up to, and for some time after the 1st January, 1875, the firm of Cooper, Fairman & Co. included in name and in fact, Mr. James Cooper, Mr. Frederick Fairman and Mr. Charles Mackenzie as partners, in all transactions connected with this railway and made in the name of that firm; that though the firm was not formally dissolved till May, 1875, an agreement was made between its members in January, 1875, the exact day we cannot name, by which all the transactions of that firm connected with the said railway, became thereafter transactions of the Department with Mr. James Cooper and Mr. Frederick Fairman, and no other person.

CONTRACT LETTING.

Up to the date of our commission 72 contracts had been made in connection with the Canadian Pacific Railway. They were numbered from one to seventy, inclusive, and 5 A and 32 A. Of these forty-two were by the Department of Public Works, and the remainder by the Department of Railways and Canals, to which the management of this undertaking was transferred in 1879.

In the first Session of the first Parliament of the Dominion, "An Act respecting the Public Works of Canada" was passed (31 Vic., cap 12), of which the following enactments form a part :—

"Sec. 20. It shall be the duty of the Minister to invite tenders by public advertisement for the execution of all works, except in cases of pressing emergency, where delay would be injurious to the public interest, or where, from the nature of the work, it could be more expeditiously and economically executed by the officers and servants of the Department.

"Sec. 21. The Minister, in all cases, or where any public work is being carried out by contract, shall take all reasonable care that good and sufficient security be given to and in the name of Her Majesty, for the due performance of the work, within the amount and time specified for its completion; and also in all cases, where it seems to the Minister not to be expedient to let such work to the lowest bidder, it shall be his duty to report the same and obtain the authority of the Governor previous to passing by such lowest tender."

It will be observed that the language herein contained points only to security for the due fulfilment of contracts, making no allusion to tenderers, or the expediency of obtaining from them pledges of any kind.

"The Canadian Pacific Railway Act" was passed in 1874; in which it was enacted :—

"Sec. 7. The said Canadian Pacific Railway and the branches or sections hereinbefore mentioned * * * shall be constructed under the general superintendence of the Department of Public Works.

"Sec. 12. In case it shall be found by the Governor in Council more advantageous to construct the said railway, or any portion thereof, as a public work of the Dominion of Canada, the construction thereof shall be let out by contracts offered to public competition, and the Governor in Council may establish, from time to time, the mode and regulations under which the contract shall be given; * * * such regulations not being contrary to any of the provisions of the Acts regulating the Department of Public Works, or to any other Act or law in force in the Dominion."

This last clause suggests that rules are required, in addition to the statutory one, that the lowest offer shall be ordinarily accepted.

The enactments above mentioned were in force while the seventy-two contracts were being made as aforesaid, for matters in connection with this railway.

We understand the spirit of this legislation as a whole to be that the Governor in Council should prescribe such regulations, amongst other things, for the receipt of tenders in all public competitions, as would as far as possible make the lowest tender the best one to accept in the public interest, and that being provided for, the contract should be invariably awarded to the lowest, unless an Order in Council should otherwise direct.

Could regulations be so framed as to accomplish absolutely this desideratum, viz.: that the lowest offer would always be the best to accept, then the action of the Department in letting the contract would be almost mechanical, each tender, fixing by its price, the rank and rights of its author.

But whether regulations so perfect as this could be framed or not, the clauses above alluded to seem to commit to the Governor in Council the authority to make them as sufficient as possible, as well as the right to remove individual cases from the general rule of the Statutes.

It is not inconsistent with the establishment of regulations by the Governor in Council, that Departmental rules may be made auxiliary to them, and indeed it seems to be a necessary consequence of the main regulations, that in the Department there should be some well understood means of deciding, whether these regulations were in each case followed.

Assuming then that regulations are to be framed for the purpose of encouraging such competition for public works as will elicit offers of which the lowest shall be always that which, in the public interest, it is best to accept, the first thing to be accomplished is, in our view, to make the probability of fulfilment, as far as possible, equal in all of them.

The lowest, without this cardinal characteristic, could not be the best to accept, and in the problem as to whether an offer is likely to be fulfilled, the good faith and the ability, both financial and administrative, of the party making it, must be ever present factors; therefore we consider that the main aim of the regulations governing competition, should be to bring forth offers only from tenderers who possess those qualifications.

Without believing it possible to regulate the receipt of tenders, so as to exclude with certainty all offers from those who are not both willing and

able to fulfil them, we feel it a duty to point out some instances in which the present system has led to serious delays and difficulties in the action of the Department, and at times to large gain by speculators who came within the letter of the Statute as lowest tenderers, but whose offers, according to our view of the spirit of the law, ought never to have reached the Department. By doing this we may indicate, to some extent, the nature of the remedy to be applied.

Before taking up individual cases, we may mention that in ten contracts concerning this railway, tenderers to whom they were respectively awarded, have failed to make good their proposals, and agreements have consequently been made at higher rates, the excess over the prices of the said tenders, amounting under such agreements to more than a million of dollars. In some of these cases no deposit had been made with the tender. Whenever it was furnished it was subsequently returned to the defaulter.

In the case of contract 15, the tenders received on 20th September, 1875, showed the following to be the three lowest :—

A. P. Macdonald & Co.....	\$1,443,175
Martin & Charlton.....	1,562,090
Sutton & Thompson.....	1,594,085

Ten days after the final receipt of the tenders, the Department awarded the contract to A. P. Macdonald & Co. About a fortnight after the award, this firm informed the Department that under the opinion that the track-laying on the adjoining section would be at such a time as to make it available in August, 1877, they had made their bid 25 per cent. lower than it would otherwise have been, and they proposed that before entering into the contract, the Government should undertake to make good to them certain expenses, which would be incurred, in case that section should not be available as soon as they had expected (page 232), which conditions being refused they declined, on 16th October, to take the contract.

It will be noticed that the request to have new conditions attached to their offer, took place twenty-three days after all the tenders had been received at the Department.

On the 17th October the contract was awarded to the next lowest tenderers, Martin & Charlton. More than two months elapsed without this firm furnishing the security required of them.

On or before 20th December following, Mr. Charlton was, according to the statement of the Hon. Donald McDonald, paid by the latter \$20,000 to

decline the contract, and it was done accordingly by the following telegram :—

"Dissention from within added to extraordinary pressure from without has left no alternative but withdrawal.

"CHARLTON & CO."

And on the 21st December a letter to the same effect was sent to the Department signed by Mr. Charlton. (Page 237.)

A cheque of \$1,000 had accompanied the tender of this firm as a guarantee of their good faith. When presented to the bank on which it was drawn it was dishonoured and protested.

On the 29th December the contract was offered to the next lowest tenderers, Sutton & Thompson. They nominally accepted it by a telegram the same day. The evidence leads us to say, that they never intended or expected to take the contract or carry on the work, and never believed that they could do so successfully. They made their offer, trusting solely to the chance of making a profit by selling out to some other person; the system of the Department being one which enabled them to do so with impunity. As a fact the Hon. Mr. McDonald had paid them \$10,000 for their position, in pursuance of an arrangement made between them and Mr. Whitehead, by which, if the contract should be offered to them, they were to have no interest in it; but they were to go through the form of taking it with Mr. Whitehead as an additional partner; and this was done, they being subsequently released under an Order in Council.

The amounts paid by Mr. McDonald to Martin & Charlton, and to Sutton & Thompson, in all \$30,000, were not lost to him or to Mr. Whitehead; they were lost to the country, which paid to the contractors a still higher sum as the consequence of Martin & Charlton's withdrawal.

The tenders for contract No. 42 opened in January, 1879, showed the following as the three lowest :—

	Trains—July, '82.	Trains—July, '81.
Morse, Nicholson & Co.....	\$3,364,274	\$3,467,506
Andrews, Jones & Co.....		3,915,942
Fraser, Grant & Pitblado.....	\$4,130,707	

After about three weeks spent in enquiries concerning the ability of the firms who had made the two lowest offers, and coming to the conclusion that there was little or no probability of either of them fulfilling its offer, the Minister decided, nevertheless, that the established system had

fixed the eligibility of each tenderer, and in deference to it, he formally awarded the contract to Morse & Co. on the 20th February, 1879.

This firm had made their offer without any belief that it could be fulfilled. Some time before it was sent in, members of the firm had met at Toronto, and settled on prices to be named in their tender, which would give them more than half a million dollars, beyond the total of their tender as actually sent in. At Ottawa before putting in their offer, it was decided to make it as above mentioned, \$3,364,274, and it reached the Department in that shape. The price was lowered, not because they thought their first offer too high, or because they were willing to carry out a contract at the lesser rate, but because they wanted to make sure of the award of the contract, and to take their chances upon something turning up afterwards, which would relieve them from the proper consequences of the bargain. Six days afterwards they notified the Department that they would not carry out their offer. This was at a critical season of the year, when no time could be lost in closing a contract.

Morse & Co. had before their refusal bargained with Andrews, Jones & Co., the tenderers next above them, to share the chances on the offer of the latter, which was \$551,668 higher than their own.

On the same day, 26th February, the contract was awarded to Andrews, Jones & Co.

Morse & Co. supposed them to have sufficient means at their command to take the contract, and they (Andrews, Jones & Co.) had written on two occasions, 6th February and 24th February, declaring that they were prepared to furnish the security. But, as a fact they were not so prepared, they were themselves unable to do so, and had never made any positive arrangement with any one else to do so. A party in New York would have done this had he been convinced that his money was safe, but this depended on a report from Col. Smith who came to Canada to make enquiries concerning the work to be done and who was to return to New York before he made the report. Three days were given to Andrews, Jones & Co. to make the deposit preparatory to the execution of the contract; they asked for an extension of time which was not granted. Nevertheless, under the impression that a well known contractor of considerable capital in Canada was likely to join them, the Minister deferred for several days passing to the tender next above them; but on being notified that this would not

happen the contract was on the 5th March awarded to Fraser, Grant & Pitblado.

In our judgment every one of these offers was made without any sufficient ground for believing that the tenderer could fulfil it if accepted; and nearly every one without any desire that he should fulfil it.

It is plain beyond argument that when competitors of this class are amongst tenderers, time is lost to the Department in the process of reaching one whose offer is in earnest, and whose proposal can be made available to the Government, and we think it equally certain, that such competitors will appear unless the conditions under which they may send in tenders are made much more serious than was the case before the date of our commission.

The saving of the time thus lost, would of itself be probably considered worth the effort to eliminate all but genuine tenders from public competition. But the loss of time is not the only evil; occasionally it might be no detriment and a Department could now and then, without much inconvenience, work its way from the lowest offer, a sham one, up to some higher one, made by a party ready and desirous to take the contract.

But we think the system of requiring deposits so small as to be insignificant, compared with the chances of profit by selling out to higher tenderers, creates another difficulty which the legislation aims at destroying, that is, the necessity of paying more for works than would be done under a fair competition amongst offers made on a business basis.

Let us take for illustration a case in which the difference between the highest and lowest offer is \$200,000--and in many of the cases it was very much more--this difference being made up by gradations of \$20,000 each between ten different tenders, a deposit of \$2,000 being required with each tender, as an evidence of good faith, with the certainty that the deposit would be forfeited if the tenderer failed when required to carry out his offer. It is evident that each tenderer to whom the contract was awarded might be tempted to sell his position to a higher tenderer--if he could get more than \$2,000 for doing so--and it is equally clear that the higher tenderer would be tempted to give more than \$2,000 for a withdrawal, which would seem to put within his grasp all his calculated profits on so large a contract.

And thus would be made more than probable the result which the regulations concerning contract letting would be framed to prevent. Even

when the offers are from persons who believe the work could be done at their prices, the system of requiring no forfeits, or trifling ones, offers a sure profit and a quick return to the tenderer who will withdraw for a consideration, and a yet higher price to the one who will buy his withdrawal.

But the case thus stated as an illustration fails to present the temptation in as strong a light as it existed during these contracts.

In the case of section 15, the gradations averaged something like \$70,000; the deposit was \$1,000; and it must have come to be well understood in the tendering community, that making the deposit was a formal act of trifling; for in every case, and there were several, in which it could have been forfeited, it was returned to the defaulting tenderer.

We suggest the expediency of requiring with each tender security of a much more substantial character than any given with those for the contracts we have been considering. We do not think it would be advisable always to make it of an amount sufficient to cover the difference between the tender which it supports and the one next above it, although this could be done by a covenant of sureties, to be sent in with the offer for such an indefinite amount as would meet that case.

It is true that if the security with the tender does not cover the difference in the amount between it and the one next above it, the temptation may occasionally exist, which we have described as leading to the objectionable transaction of selling out; but the differences between tenders vary, and being unknown at the time tenders are being received, a speculator will not be inclined to invest a substantial amount upon the chance, that the difference between him and the one next higher will be so great, as to afford a profit to both by a purchase of his position at a price higher than his deposit, and this will exclude him. The elimination of this class of competitors will be done by themselves, instead of by the Department as heretofore, always at a loss of time, sometimes of money, and it will practically extinguish a class of irresponsible middlemen, through whom reliable contractors are often forced to buy their way to contracts for important public works.

The requirement of substantial security with a tender will also have the effect of making parties, who, in good faith, desire to enter the competition, apply to themselves some test as to financial ability, before asking their offers to be seriously entertained. Hitherto this has been done only after the contract has been awarded, and at times with the result of showing that

it would have been as well for all parties if they had refrained from entering the competition.

We do not suggest that the security with the tender should necessarily be money, but at the option of the tenderers covenants from responsible parties, so worded (if desired) as not to indicate the name of the tenderer, or the amount of his offer.

If a tenderer, though in the best of faith concerning his prices, can furnish with his offer, neither money nor stocks nor sureties to an amount equal to say one or two per cent. on the total cost of the work, then the attempt to enter into a contract with him, on such sufficient security as the Statute demands for that purpose, would almost certainly lead to disappointment.

Up to the date at which the tenders were invited for the construction of section 15, it was not the practice of the Department to require any guarantee from the tenderer. The lowest tenderers for contracts 1, 4, 5, 13 and 14 withdrew their offers, and tenders in lieu thereof were accepted involving on the face of them, an expenditure in excess of those withdrawn aggregating \$132,174.

When the construction of section 15 was submitted for competition, although no Order in Council establishing regulations had been passed, the Department for the first time required each tenderer to deposit with his tender a sum of money (in that case it was \$1,000) which, by the terms of the specifications should be forfeited if the person making the offer should decline or fail to fulfil it, and from that time forward to the date at which we began to take evidence, the highest amount required by the Department, as a deposit with a tender, was \$5,000.

No general Order in Council established any regulations for contract-letting under the authority of the statute above mentioned, until the following:—

“Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor General in Council, on the 23rd March, 1880.

“On a joint memorandum dated the 20th March, 1880, from the Honourables the Minister of Public Works and the Minister of Railways and Canals, recommending that hereafter all public works involving an expenditure of over \$5,000 shall be let by public tender and contract, unless, owing to urgency or other cause, it be deemed advisable to take different action, and that in all such cases authority be obtained by an Order in Council.

“That with all tenders submitted a money guarantee or approved accepted cheque shall be given, to be open to forfeiture in the event of the tenderer failing to make the necessary

five per cent. deposit hereinafter referred to, within eight days after receiving notice of the acceptance of the tender or of his declining to enter into contract when requested, the amount of such guarantee to be fixed at a sum not less than \$1,000 nor more than \$5,000.

"That upon acceptance of a tender and notification by the Department concerned, the intending contractor shall, within eight days, deposit with the Government a sum of money equal to five per cent. of the amount of his contract.

"That in all cases where tenders have been called for, the lowest received shall be accepted, unless good and sufficient reasons appear for passing over such tender.

"The Committee submit the above recommendation for Your Excellency's approval

"Certified.

"J. O. COTÉ,

"C. P. C."

Before formulating our suggestions as to future regulations concerning contract letting, we think it proper to mention some other subjects which might be noticed in them.

The evidence shows that the tenders between the times of their receipt and their opening, have not been kept in such a place of safety as to make it certain that the contents of some have not been improperly divulged.

They were left in a detached upright wooden desk, standing in the secretary's room; this was not an official depository; in it Mr. Braun's private papers were also kept. This gentleman was evidently confident that no one had been able to get at the tenders, and he believed they had been always safe. But we think such important documents, the knowledge of whose contents might be saleable at thousands of dollars, ought to be kept in a place of greater security than the one indicated.

It is clear that the substance of one tender, but after the opening, was communicated as mentioned in the following letter:—

"BRANTFORD, 27th November, 1876.

"SIR,—We have just been informed that Green & Co., (by some means) have discovered that there is an error or omission in our tender for section 15, Canadian Pacific Railway, in not putting a price to the item of rip rap. In case our tender should be reached, we offer to accept as a price for the rip-rap, the average taking the two tenders below our tender, and the one next above our tender, and the average of the three we will accept as our price for rip-rap.

"Should the matter come under your notice, we would ask you to kindly excuse the error or omission.

"We have no doubt, should you award us the contract, we will be able to give you good satisfaction in all matters connected therewith.

"We remain,

"Your most obedient servants,

"SUTTON & THOMPSON.

"The Hon. A. MACKENZIE,

"Ottawa."

In another respect it appears to us, that an improvement might be made in preserving a record of the receipt of tenders. The practice has been generally to stamp on the envelope the day only of the receipt, if before noon; if after, the hour also. We found it impossible to ascertain the order in which tenders had reached the Department, because in most cases the envelopes had disappeared, although the officials said it had been intended to preserve them, as references from which to learn this order, if desired.

A regular book might be kept in which the hour of receipt of every tender might be entered without delay, together with a letter or distinguishing number, the same letter or number being marked on the envelope of the tender. This letter or number being afterwards shown in the Schedule made at the opening, would complete a record, which would show the order in which it had been received as well as its amount.

In offering public works for tender, it seems to us that the first step towards true economy, would be that of obtaining a knowledge as accurate as possible of what is required.

The more exact the information offered to tenderers, the more precise will be their calculations of cost, and the narrower the margin of profit deemed necessary to cover possible and unlooked for contingencies, and therefore, it seems to be expedient before contracting for works or materials, to have a carefully prepared official estimate of their total cost. This would also be a basis on which to fix the amount of the security to accompany the tender, and without reference to the amount of the tender itself, thus preventing the extent of this security revealing the total of the offer, as it would do were it to be a percentage on the price demanded.

In addition to this official estimate, we have under the head of "Engineering" (page 74), suggested that where it is an object to exclude inconsistent tenders—a further estimate should be officially prepared of the value of each item, that is the price which would be fairly remunerative to a contractor, and these prices being affixed to the respective items in the bill of works to be furnished to tenderers, they should be invited to state simply one general percentage above or below those prices, at which they would undertake the work or supply the material.

One important feature of the present system remains to be noticed. Of the seventy-two contracts above mentioned, the highest authority on record, upon which fully two-thirds of them were awarded, was that of the

head of the Department, or one of its officers presumably acting under the Ministers instructions.

This, as well as the amount involved in each case, will be seen by the following table :—

CONTRACTS entered into for Works on the Canadian Pacific Railway and the Fort Frances Canal, prior to the 16th June, 1830, and of the Amounts estimated as being involved.

No. of Contract.	Name.	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amount involved as shown by extension of Tenders.	
		Authority.	Date	Under O. in Council.	Not under O. in Council.
				\$ cts.	\$ cts.
1	Sifton, Glass & Co.	Secretary.....	6th Oct., 1874....		127,850 00
2	R. Fuller.....	Deputy Minister....	15th Aug., 1874....		117,250 00
3	F. J. Barnard	Minister.....	Undated.....		272,250 00
4	Oliver, Davidson & Co.....	Chief Engineer....	29th Dec., 1874....		213,850 00
5	Jos. Whitehead.....	Minister.....	29th Aug., 1874....		200,000 00
5a	J. Whitehead.....	Order in Council..	11th May, 1877....	60,000 00	
6	Guest & Co.....	Minister.....	Undated.....		553,663 00
7	Ebbw Vale Steel and Iron Co..	do	do		272,346 00
8	Mersey Steel Co.....	do	do		1,101,360 00
9	} West Cumberland Co.....	do	do		513,085 00
10					
11	Naylor, Benzon & Co.....	do	21st Jan., 1874....		259,581 00
12	Hon. A. B. Foster	Order in Council..	4th Feb., 1875....		
13	Sifton & Ward.....	do	18th March, 1875	406,194 00	
14	Sifton & Ward.....	Contract.....	3rd April, 1875....		402,950 00
15	Jos. Whitehead.....	Order in Council..	8th Jan., 1877....	1,593,085 00	
16	Canada Central.....	do	4th Nov., 1874....	1,440,000 00	
17	Anderson, Anderson & Co.....	Minister.....	7th Jan., 1875....		48,666 00
18	Red River Transportation Co..	do	Undated.....		32,044 00
19	Moses Chevette.....	Mr. Hazlewood, under direction of Chief Engineer...			1,600 00

* \$10,000 per mile; 20,000 acres; interest at 4 per cent. on \$7,500 per mile for 25 years.

CONTRACT LETTING.

CONTRACTS entered into for Works on the Canadian Pacific Railway, &c.—*Continued.*

No. of Contract.	Name.	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amount involved as shown by extension of Tenders.	
		Authority.	Date.	Under O. in Council.	Not under O. in Council.
				\$ cts.	\$ cts.
20	Merchant's L. & R. SS. Co.....	Order in Council...	30th April, 1875.	31,000 00	
21	Patrick Kenny	Secretary	14th July, 1875...		8,782 00
22	Holcomb & Stewart.	do	22nd Sept., 1875.		6,500 00
23	Sifton & Ward.....	Mr. Hazlewood, under direction of Chief Engineer...			14,560 00
24	Oliver, Davidson & Co	do do			3,000 00
25	Purcell & Ryan.....	Order in Council...	6th June, 1876....	1,037,061 00	
26	Jas. Isbester.....	Secretary	23rd May, 1876....		30,989 00
27	Merchant's Lake & River Co..	Minister	16th May, 1876....		89,060 00
28	Red River Transportation Co.	do	do		174,806 00
29	Cooper, Fairman & Co.....	Secretary.....	28th July, 1876....		8,532 90
30	Robb & Co.....	Minister	Undated.....		16,160 00
31	Patent Bolt & Nut Co.....	Deputy Minister...	do		6,800 00
32	Cooper, Fairman & Co.....	Minister	do		13,738 00
32a	Lemay & Blair.....	Chief Engineer....	do		17,730 45
33	Kavanagh, Murphy & Upper..	Contract.....	21st June, 1878...		222,202 00
34	North-West Transportation Co	Minister.....	1st May, 1878....		90,000 00
35	Cooper, Fairman & Co	Order in Council...	16th May, 1878...	23,789 00	
36	Wm. Robinson.....	Mr. Nixon			72,600 00
37	Heney, Charlebois & Flood ...	Contract	2nd Aug., 1878...		809,813 00
38	Edmund Ingalls.....	Minister	12th July, 1878...		3,261 00
39	John Irving.....	Secretary	do		33,913 04
40	Gouin, Murphy & Upper	Contract	5th Aug., 1878...		30,500 00 and sch. rates.
41	Purcell & Co.	Order in Council...	3rd March, 1879.	2,300,196 00	
42	Manning, McDonald & Co.....	do	5th March, 1879.	4,130,707 00	
43	Joseph Upper	Minister		Percentage of earnings.	
44	West Cumberland Co.....	Chief Engineer	24th June, 1879		50,064 74
45	Barrow Hematite Co.	do	25th June, 1879		37,844 59
46	Ebbw Vale Steel Co.	do	26th June, 1879		37,972 23

CONTRACTS entered into for Works on the Canadian Pacific Railway, &c.—*Continued.*

No. of Contract.	Name	Highest Authority given before closing the Contract, as far as shown by the Records.		Estimate of Amounts involved as shown by extension of Tenders.	
		Authority.	Date.	Under O. in Council.	Not under O. in Council.
				\$ cts.	\$ cts.
47	Patent Bolt and Nut Co.	Chief Engineer.	4th July, 1879.		2,419 71
48	John Ryan.	Minister.	18th Aug., 1879.		600,500 00
49	R. Dickson.	Secretary.	21st July, 1879.		15,802 00
50	Miller Bros. & Mitchell.	Minister.	23rd Aug., 1879.		35,425 00
51	Dominion Bolt Co.	Secretary.	do.		2,662 50
52	North-West Transportation Co.	do.	do.		24,000 00
53	Barrow Haematite Co.	Minister.	25th July, 1879.		781,000 00
54	Guest & Co.	do.	do.		238,000 00
55	West Cumberland Co.	do.	do.		128,500 00
56	The Kellogg Bridge Co.	do.	24th Nov., 1879.		1,384 00
57	The Truro Patent Frog Co.	Contract.	21st Sept., 1879.		12,000 00
58	W. Hazelhurst.	Minister.	27th Feb., 1880.		6,096 00
59	Whitehead, Ryan & Ruttan.	Chief Engineer.			27,750 00
60	D. O. Mills—A.	} Order in Council	22nd Dec., 1879.	2,727,300 00	
62	D. O. Mills—C.			2,056,950 00	
61	D. O. Mills—B.	do.	25th Nov., 1879.	2,573,640 00	
63	D. O. Mills—D.	do.	13th Dec., 1879.	1,746,150 00	
64	Ryan, Whitehead & Ruttan.	do.	16th March, 1880.	7,350 00	
65	James Crossen.	Secretary.	3rd March, 1880.		24,961 00
66	Bowie & McNaughton.	Minister.	7th March, 1880.		438,914 00
67	Moncton Car Co.	Secretary.	11th March, 1880.		70,800 00
68	Ontario Car Co.	do.	3rd March, 1880.		6,230 00
69	North-West Transportation Co.	Order in Council.	14th June, 1880.	48,000 00	
70	do do.	do.	15th May, 1880.	Schedule rates	

FORT FRANCES LOCKS.—No contract made. Work performed by days' labour. Authority sent to Mr. Sutherland to commence work, by letter of the Secretary dated 11th May, 1875.

T. TRUDEAU,
Deputy Minister of Railways and Canals.

It will be seen, that throughout these contracts, a considerable portion were awarded by either the head, or some subordinate of the Department, without having been submitted for approval to the Privy Council.

It is true that the statute does not require the award to be authorized by the Privy Council, unless where the lowest (available) offer is passed over; but it is suggested for consideration, whether unless regulations are to be adopted of a more stringent character than those in force up to this time, so as to exclude offers of a gambling character, it would not be well that all contracts involving sums above a specified amount, be awarded only after consideration by some higher authority, for instance, a Committee of the Privy Council.

Large sums have been expended on this railway, through transactions originated, directed, and concluded solely by the Department without the authority of the Privy Council.

In addition to the inexpediency of depending in such cases entirely on the judgment of one person, the practice seems to us to cast upon the individual a responsibility which is dangerous to himself and injurious to the community; it naturally concentrates upon him party and personal pressure for his favours, and often party and personal abuse for his action, while it fosters in the community a habit of bartering for influence, because it is supposed to be more easily and more effectually exercised over one mind than over more

We think it would be an advantage, if no transaction involving an expenditure beyond a specified sum, could be arranged for by competition or otherwise, unless such expenditure should be first directed by some authority higher than a department, and unless the report or recommendation of the Department in which such direction is asked should, amongst other things, give a written report from its engineer—when the object of the expenditure involves engineering results—and this whether that report be in accordance or not with the step recommended.

In order to avoid the responsibility of passing over any tender which is known to be low enough to call for the contract but which cannot be accepted owing to some omission in the qualifying conditions, it has occurred to us that it would be well to prevent the knowledge of its contents reaching the Department unless and until all preliminary conditions have been first fully performed, and with this object that the tender should be enclosed by itself in a sealed envelope, which, together with the securities and other

necessary documents, should be enclosed in an outer envelope. If on opening the outer envelope, the securities and accompanying documents were not sufficient to entitle the tender to enter the competition, then the inner envelope should be forthwith transmitted unopened to such address as may be given for that purpose in the outer envelope; but if from any cause it should be opened by the Department, then it should be entitled to compete on the same terms as all regular tenders.

If it should be decided to accept personal covenants by way of security with tenders, questions might arise respecting the financial standing of the sureties, and the regulations might provide that in doubtful cases, the decision of such question would be left to some authority, either independent of, or acting with the Department. If the tenderers were parties to this covenant, and were well known capitalists, the document would be necessarily sufficient; if not the parties might, before the last day for receiving offers, learn from the Department whether the sureties they could get would be satisfactory; or in cases of large contracts, where the difference in amount between the various tenders was likely to be considerable, and a short delay would not be detrimental, then the advertisement might name two different days, one for opening the outer envelope, and a later one for the consideration of those tenders which should be shown to be entitled to compete—the intervening period permitting enquiries to be made as to the sufficiency of sureties, if any, offered with tenders.

We submit for consideration whether it would not be expedient to regulate the letting of contracts by rules to the following, or some similar effect:—

No contract expected to involve an expenditure beyond [\$50,000] shall be made, and no competition therefor shall be invited by the [Department of Railways and Canals] unless such expenditure be first authorized by a resolution of [the Treasury Board.]

Such authority shall not be given where the object of the contract involves engineering results, unless the recommendation from the head of the department on which such authority is to be based, is accompanied by a report of the Government Engineer having charge over the subject.

That before submitting to competition the construction of works by the said Department or the supply of material to be used therein, an official estimate shall be prepared concerning the value of each item, on which prices are to be asked.

That in cases where inconsistency in prices would be likely to lead to a material increase or loss of profit to the contractor, according as particular items should after the contract be proportionately increased or diminished, then prices shall be affixed by the Department to the respective items in the bill of works, and competition shall be invited only as to a general percentage above or below the prices at which the contract will be taken.

That all tenders in such public competitions shall be made on forms to be supplied by the Department.

That with each tender the party making it shall be required to furnish such security as may be designated in the form, his tender containing a covenant under seal, that such security shall be forfeited if he fail to fulfil his offer, by entering into a contract and furnishing the requisite security.

That in each case the amount of security with the tender shall be fixed without relation to the amount of the tender, and shall be such sum or sums as may be stated in the form.

That the security with the tender may be in cash or debentures, or bank or other valuable stocks, or personal covenants from responsible parties, or partly one and partly the other, as shall be mentioned in the form, which shall also enumerate the companies whose stock will be accepted.

That in no case, unless specially directed by an Order in Council, shall the security with the tender be less than [one] per cent. of the probable total outlay according to the official estimate before mentioned. That if the security be given by a personal covenant instead of by any other of the prescribed methods, then it shall be [two] per cent., unless otherwise specially directed by Order in Council.

That the receipt of such security with a tender shall be qualified by a condition, that in no case shall it be forfeited to an extent beyond the difference between the amount of that tender, and the one next above it, which shall have been accompanied by the necessary security, and received and opened as regular.

That each tender shall be placed in a sealed envelope by itself, which together with the documents necessary to comply with all preliminary conditions, shall be enclosed to the Department in another outer envelope.

That it shall be the duty of the Departmental officials not to open the inner envelope, until it be decided that all preliminary conditions have

been fulfilled, and if these conditions be not fulfilled then to transmit forthwith the inner envelope unopened, to such address as may be given for that purpose in the outer envelope.

That if this duty be neglected so that the inner envelope cannot be returned unopened, then the tender shall be entertained as if all necessary preliminary conditions had been complied with.

That the receipt of each tender shall be recorded in a book kept by the Department for that purpose—the entry showing the time of its receipt, and a number or distinguishing mark by which it may be known—the same number or mark being put on the envelope of the tender.

That tenders, after their receipt and before their opening, shall be kept as valuables in some sufficient safe or vault.

GENERAL CONCLUSIONS.

As far as concerns the period over which our enquiry has extended, the evidence as a whole leads us to the following conclusions:—

That the construction of the Canadian Pacific Railway was carried on as a Public Work at a sacrifice of money, time and efficiency.

That in this work numbers of persons were employed as Government officials who were not efficient in the positions to which they were appointed, having been selected on party grounds, irrespective of the question whether their engagement would be advantageous to the public interests.

That during the progress of the undertaking, delays occurred which would not have occurred, but for the necessity of staying operations from time to time until the necessary appropriations were made by Parliament.

That the examination of the country over which the line was located was inadequate, failing to give to the Government that information which could have been given, and which was necessary to enable the Government to estimate, with reasonable accuracy, the probable cost of the railway.

That large operations were carried on and extensive purchases made with much less regard to economy than would have happened under similar circumstances in a private undertaking.

That the practice which permits a Department to originate and enter upon transactions involving the expenditure of large sums of money, and, without other authority, to award the contracts under which such expenditure is intended to take place, is a disadvantage.

That the system under which the contracts were let was not calculated to secure the works at the lowest price or the earliest date ; it pledged the Department to treat with tenderers irrespective of their good faith or financial strength, upon the single test of a deposit of money, so small as to be useless as a guarantee, the possible efficacy of this being neutralized by the invariable practice of returning his deposit to each defaulter. Such a system promises to every tenderer a position which he risks nothing to procure, and which he may at his option abandon, or retain, or sell if he can.

GEO. M. CLARK,
SAMUEL KEEFER,
EDWARD MIALL.

OTTAWA, 8th April, 1882.

APPENDIX.

STATUTORY DECLARATION OF ALBERT H. CLARK.

"COUNTY OF SELKIRK, }

"To WIT: }

"In the matter SIFTON, GLASS & Co's Telegraph Contract.

"I, Albert H. Clark, of the City of Winnipeg, in the County of Selkirk, do solemnly declare that I was foreman on the contract for building the telegraph line from Winnipeg to Fort Pelly.

"2. I have been over all the line except a small piece from Shoal Lake to Lake Manitoba. I superintended all the work from Pelly to within a few miles of Mossy River, and I am quite sure that in no single instance were poles set in the snow and frost alone, but in every instance the poles were the best that could be obtained in the different localities, and they were well sunk in the ground, and in wet or boggy places were always well braced.

"3. Mr. Sifton gave me the most positive instructions to have the work well done, and those instructions were carried out always to the best of my ability.

"4. I have seen it stated that the line was carelessly built, and that was the reason it was so hard to keep it in repair, but I am quite sure that those making such statements must have known that they were drawing upon their imaginations; for, indeed, some who have so spoken have never even seen the line.

"5. I have seen a great many telegraph lines, but have never seen one as difficult to build as this, and have never seen a place where it was so difficult to keep a line in repair; and I very much doubt if there has ever been a line built in such an unfavourable place, when all the swamps and water-stretches are taken into consideration, together with the fact of the country through which the line passes being so thinly settled. No person can form any idea of the difficulties except he has been on the ground. Having had the care of part of the line for some time, I am sure Mr. Sifton did all in his power to keep the line in order, his instructions being to keep communication open, no matter what the expense might be, if it were at all possible.

"And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled 'An Act for the suppression of Voluntary and Extra-Judicial Oaths.'

"A. H. CLARK.

"Declared before me, at Winnipeg,
in the County of Selkirk, this
22nd day of October, A.D., 1880.
"J. A. M. AIKINS,
A Commissioner."

"STATUTORY DECLARATION OF WILLIAM M. SIFTON.

"I, William M. Sifton, of Lake Manitoba Narrows, of the North-West Territory, do solemnly declare that I have now, and for over two years have had, under my charge the Telegraph Line from Shoal Lake, fifty miles east of Lake Manitoba, to Duck Mountain. My instruc-

tions from Mr. Sifton are to spare no cost in keeping the line in repair, and I have followed these instructions to the best of my ability; I have read the statement of John Conners before the Royal Commission, I had this man on the line and had to discharge him for neglect of duty. The statement made by him as to my going away trading and neglecting the line is false, as also is the statement about the way in which the line is built. I have been over the line from one end to the other, and in every case, the poles put in were the best that could be procured in the locality; and they were put in to a depth of not less than three feet, sometimes greater. I consider that the work on the line was well done throughout. As to the work assigned to Conners, if he was dissatisfied, he could have left at any time. The fact of his remaining until discharged, shows conclusively that the work was not unreasonably difficult. When found necessary extra hands were always put on to assist. I think I can explain why there has been so much difficulty in keeping the line in proper repair. The principal trouble has been in and about Dog Lake; at this place there are miles of swamp, and from Duck Mountain to Selkirk the water has been rising for the last two years, and now, I am quiet safe in saying, that in all the swamps the water is from one to two feet higher than it was when the line was built. Owing to this rise of water there are districts, many miles in extent, entirely covered with water, which were quite dry at the time of the construction of the line. Much of the line has been re-built. I am at present renewing poles, and next summer I am sure that the whole of the line will have been renewed and in good order. If it were not for the increase in the amount of water, I would have no difficulty in keeping the entire line in perfect repair, but at present, taking the whole line into consideration, I know of no other line of equal extent which offers such great difficulties to the repairer. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of an Act passed in the thirty-seventh year of Her Majesty's reign, intituled 'An Act for the suppression of voluntary and extra judicial oaths.'

"WM. SIFTON.

"Declared at the City of Winnipeg this eighteenth day of October, in the year of Our Lord 1880, before me,

"JOHN H. BELL,
"Justice of the Peace."

"STATUTORY DECLARATION OF HENRY W. WYNNE.

"COUNTY OF PROVENCHER. }
"To Wit:

"In the matter of Sifton, Glass & Co's Telegraph Contract.

"I, Henry W. Wynne, of the Town of Dominion City, in the County of Provencher, do solemnly declare that I was foreman for Sifton, Glass & Co. when they were building the line west of the Narrows of Lake Manitoba.

"2. That I have full knowledge of the manner in which the line was built.

"3. That I had written instructions from Mr. Sifton as to the manner in which the work was to be carried out

"4. That the work was performed according to instructions in a good and substantial manner, the poles were well sunk in the ground, and in wet places were properly braced, and were of the very best material that could be secured in the locality.

"5. I have heard that statements have been made to the effect that the poles were only put down in the snow and frost and as soon as spring came they fell down, and I have no hesitation in saying that such statements are base falsehoods and could only be made for the purpose of injuring Mr. Sifton.

"6. I completed the line about thirty miles west from Lake Manitoba, and from what I saw of other parts of the line I am satisfied that the work was as well done as was possible with the poles that could be obtained in the respective localities.

"And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Act passed in the thirty-seventh year of Her Majesty's reign, intituled An Act for the suppression of voluntary and extra-judicial oaths."

"HENRY W. WYNNE.

"Declared before me in the County of Provencher, this 11th day of November, 1870.

"MARK WHITLEY,

"Justice of the Peace."

STATEMENT OF MR. BELL.

"LEE'S FERRY, ARIZONA, U.S.A.,

"26th July, 1881.

"DEAR SIR,—As I believe that evidence which I can give to the Commission upon the subject of contract No. 25 is very important; and as the absence of Mr. Miall has prevented his brother Commissioners from taking my evidence in regular form; and as I have had to leave Ottawa suddenly for work here in the Western States, where I shall probably remain for a long time, I feel it my duty to take the only means at my disposal for putting my evidence on record, and, therefore, I beg leave to submit to the Commission the following statement:—

"In the summer of 1879, with the assistance of Mr. A. J. Hill, now in charge of part of the works on the Canadian Pacific Railway in British Columbia, I made, under the directions of Mr. Sandford Fleming, a re-measurement of the earthwork, rockwork and ballasting executed under contract No. 25, of the Canadian Pacific Railway. My instructions were contained in a letter from Mr. Fleming, dated about 20th May, 1879.

"My measurements were almost all made in excavation, and not in embankment, as has been intimated in other evidence. The contents of line cuttings were ascertained by means of cross-sections of the finished work, the form of the original surface being transferred from the cross-sections taken of it before the contract work was commenced. The same means of measurement were used in such borrow-pits as could not be measured closely by ordinary tape measurements. The quantity of excavation in ditches was ascertained by a tape for the width, a levelling rod for the depth, and by chaining along the line for the length, where the the engineers' working stakes were not regularly and satisfactorily found. In taking the depths of the ditches, the tape was stretched across the ditch along the original firm surface, the rod was then driven down with considerable force into the soft mud and water to the firm bottom, and the depth was read off the rod where the tape crossed it. Particular care was always taken to ascertain the full depth, and in cases where, from the presence of much water, or from any other cause, there could be an uncertainty about the exact depths being ascertained, two or more soundings were made.

"The original firm surface was always easily found, for though there had been fire almost all along the sides of the railway, there were always portions of unconsumed sods, patches with the unburned roots of grasses, or charred fragments of the stems of small shrubs, which showed plainly the level down to which nothing but the green growing moss, shrubs and grasses had been destroyed, and at which the true excavation had been commenced, and in no case where measurements were made, as given in my returns, was there any difficulty in ascertaining the correct dimensions of the work as executed. In some cases it was impossible for me to ascertain beyond doubt the correct quantity of excavation, though the embankments were measurable and were measured, and in other cases neither embankment nor excavation could be measured; but in both such cases, which, in the aggregate, had a length of only about two miles out of the eighty of the length of the whole contract, I adopted the quantities returned by the engineer in charge.

"There is only one embankment of large size the contents of which was ascertained by measuring the embankment itself. The measurement was effected by means of cross sections from the original firm surface on one side of the embankment, to the same surface on the other side; and the amount of compressibility of the material in the embankment, which was almost entirely sandy loam and boulders, was carefully ascertained by direct experiment.

"In every case in which there was a possibility that the digging of ditches might have caused a subsidence in its immediate neighbourhood, cross-sections were taken to the extent of 100 yards or more on each side of the railway, but, except in the cases mentioned above, where I adopted the engineer's quantities, and one other case (that of an off-take drain of considerable extent) there was no appreciable change of surface which could have caused the apparent excavation to be anything less than the real. In all such places, excepting those just mentioned, the sides of the ditches were plumb and firm, and the bottoms were also so firm that a man could walk on them without sinking more than through the few inches of mud and water lying on them. There was therefore no evidence whatever of any bulging of the sides or blowing up of the bottoms. In the case of the off-take above mentioned the sides of the excavation were plumb and very firm—the bottom also was generally firm, in many many places very firm—but in some places it appeared as if a firm stratum had been cut through into a comparatively fluid mass underneath. Long cross-sections were taken at several points, showing that at the time of the off-take there was a depression of about two and a-half feet. As the stuff which was taken out of this off-take was deposited in heaps alongside the ditch, I selected a portion of the ditch, about 200 feet long, and measured carefully the excavation and the stuff taken from it and deposited alongside. The deposited stuff was in low, flat heaps; it had not been subjected to any compression or to any shrinking agency except the draining out of water and the drying by the air. The volume of the deposited stuff was very much less than the volume of excavation, and I am fully of opinion that no more stuff was excavated than what the present size of the excavation shows; also I am of the opinion, from examining the ditch and the surrounding ground, that there is in this place a surface layer of comparatively solid peat four or five feet thick; that underneath this there is semi-fluid peat, and that as the excavation proceeded water and semi-fluid peat were drained away but not excavated, and that thereby the surface layer sank down, making the depression of between two and three feet that I have mentioned.

"In connection with the excavation of this ditch, I may mention here that in several places short poles, about three inches in diameter, are laid across the bottom and stuck by

their ends into the two sides. These are said to be for the purpose of keeping the bottom from blowing up. But inasmuch as they are laid in many places where there is no sign of a tendency to such blowing up, in fact in places where the bottom may be called solid; as they are laid fifteen to eighteen inches apart, and consequently could not possibly be of any influence to prevent the bottom from blowing up had it been so inclined; and as even if the bottom had blown up, the emptied stuff, semi-liquid in itself, would simply have been washed away by the stream through the ditch and done no harm to anything,—I have not allowed anything for them, as they are utterly valueless for the purpose pretended, and in fact are only a make-believe.

“Also in connection with this ditch, the clearing done is nearly 100 feet wide, nine-tenths of which is ostensibly for the purpose of providing clear ground on which to deposit the stuff from the ditch. But as the ditch is only $8\frac{1}{2}$ feet wide and $4\frac{1}{2}$ feet deep (and the waste heaps have a less cubic content), a clearing of nearly 90 feet wide gives an extremely and uselessly large area of spread ground. In fact the trees were small and stunted and *very thinly* scattered over the swamp, and all the wasted stuff could have been, without the least difficulty, deposited among them without cutting a single tree, except what was growing on the exact site of the ditch. The ditch and clearing are about a mile long.

“From some notes which I saw in the books of the engineers in charge about moss, from my having seen on the works a certain use to which moss was frequently applied, and from a conversation which I had with one of the assistant engineers, Mr. Wicksteed, I believe the chief cause of the difference between my quantities and the quantities of the engineers in charge is owing to the engineers having measured all the green living moss on top of peat as if it were solid earth, instead of, as it very often was, (according to Mr. Wicksteed, unless I completely misunderstood him), a frozen mass of snow water and moss, cut with an axe and generally thrown into the embankment. Mr. Wicksteed at first objected to this system, but he afterwards complied with the rule that had been adopted on other sub-sections. In my measurement, I made no allowance for the moss growing on the solid peat, except in a few places where the depth of the moss was so great, that a considerable portion might be said to be partly converted into peat, though by no means of the same consistence as peat, and in those places I made what I intended to be, and I believe to be, a very full measurement as if of all solid peat.

“In the last paragraph, I have said that from a certain use to which I had seen moss frequently applied, I had come to the opinion that the engineers had measured moss, as solid peat. The circumstances are as follows:—Notwithstanding that for a great portion of the contract the moss lying on the firm peat had, at the time of my measurement, been consumed by fire, there were very many cases when it was evident that the first sods of moss or peat had been laid carefully along the sides of the ditches, and so dressed that they appeared to be in their natural position. This gave to the ditches an apparent depth considerably greater than the true, and I believe this false depth was in very many cases, if not almost in all, undetected by the engineers. I have been told that it was detected by some of the engineers, and that former measurements were corrected accordingly. But I believe from the appearances presented at the time of my measurement, that many cases were never detected by the engineers. In one case that came under my own observation, the falsification was so skilfully done, by what I may call “underpinning,” that it was not detected by any of my party until an accident brought it to light to myself, and after this several cases of the same kind were discovered on other parts of the line.

"But besides the difference in the total quantity of work executed according to my measurement, and according to that of the engineers, I make a very serious difference in the value of the work done, owing to what I consider a very wrong interpretation of the specification relative to loose rock and solid rock in boulders. In my report on my measurement, I alluded to this difference under the word "classification." As far as I have seen the evidence taken before the Commission, I do not see that any one has taken this point up, and I consider this a very serious matter, as it involves the payment of about \$30,000.

"The specification for loose rock seems to me very distinct, explicit and easily understood. It says that rock *in situ*, that is rock in the place in which nature formed it, which has been so broken up by the action of the weather or the convulsions of nature, but still lying in its original place, relatively to its immediate surroundings is to be called loose rock, and besides that, all boulders of a size between 14 and 40 cubic feet, taken out of excavations are to be classified as loose rock, while all boulders of over 40 cubic feet are to be classified as solid rock, and all under 14 cubic feet are to be classified as ordinary earth. There seems to me to have been so very little true loose rock *in situ*, that I could not say there were more than a very few yards altogether, and consequently I classified all rock *in situ* as solid, and all the loose rock which I give in my return is made up of boulders alone.

"It was evident to me, in examining the works, that during the progress of excavation such boulders as could not be readily loaded like ordinary clay or gravel into the carts or waggons, were dropped down into the bottom of the cutting, and when the cutting was required to be cleared out they were loaded on "stone boats," hauled out, and dumped in the most convenient places, generally on the sides of the adjacent embankments within the first 300 or 600 feet of length. In this position they were easily examined and their gross cubic contents ascertained. If I noticed in these boulders that a large proportion were, or had been before being broken up, of a much less cubic content than 14 cubic feet, I assumed that no boulders of a greater size than 14 cubic feet had been buried in the embankments, and I made my estimate accordingly. In many cases I adopted another plan of estimating when such plan appeared to be more suitable. I supposed the cutting from which the boulders had been taken to be divided longitudinally into slices of six feet thick. I estimated by careful inspection of every large boulder appearing in the two slopes of the cutting, down to much less than 14 cubic feet, the gross cubic content of all such boulders, and I assumed that so much occurred in each longitudinal slice of six feet thick; and I made my estimate accordingly. Sometimes I used both methods of estimating and adopted the more liberal result.

"It does not appear from the books of the engineers in charge that the boulders in cuttings were ever actually measured, even to test the correctness of the principle on which the engineers' estimates were made. A certain percentage was assumed, in fact guessed at, in each case. One of the assistant engineers, Mr. Middleton, told me of one case where he had estimated the quantity of loose rock in boulders as 25 per cent of the whole cutting. His superior, Mr. McLennan, instructed him to change his estimate from 25 per cent. to 35 per cent., and then the district engineer, now dead, instructed Mr. Middleton to retain the estimate of 25 per cent., though, in his opinion, it should have been only 20 per cent. This cutting is a short distance westwards from a very high viaduct, about four miles from the east end of the contract. My estimate is very much less than the lowest above given. This is one of at least two cuttings where it may be seen by Mr. Middleton's books, that besides paying for 25 per cent.

of rock in boulders supposed to be taken from the cuttings and deposited in embankments, there is a charge in the form of a large amount of additional rock excavation, for hauling out these self-same boulders in the final clearing up of the cutting. The second cutting where a similar charge will be seen is a few miles further west, at a heavy embankment over the Oskondago River.

"In both these cases the quantity of boulders actually hauled out, (and most likely this was the true total quantity of loose and solid rock boulders), could very easily have been ascertained, and in both these cases the hauling out was twice paid for; but the second payment was under the guise of an increased quantity of work in rock cutting which was never done.

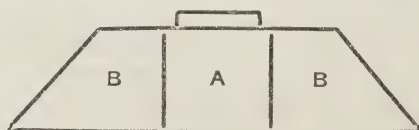
"At a ballast pit, about ten miles west of Savanne Station, there is a cutting, the quantity of which I do not exactly remember, but it is about 15,000 cubic yards, of which the engineers say 40 per cent. was loose rock. The material is a coarse, loose, clayey gravel, and there is not in the slopes of the cutting or of the embankment made up from it a single indication, that there can have been more than a very few cubic yards of boulders, such as should be classed as either loose or solid rock. The usual rule of leaving the heavy boulders for the last is here missing, except in the case of a very few which still lie at the side of the cutting, and which I took account of in my estimate. It is impossible for me to believe that 6,000 cubic yards of such boulders can have been so disposed in that hill, as that so little sign of their having ever been there is visible now, or that they can have been so disposed in the adjoining embankment, as that they should be completely hidden by smaller stuff.

"I have stated above that the difference between me and engineers in charge relative to the classification of loose rock in boulders, is due to what I consider a very wrong interpretation of the specification on that point. The specification says that rock *in situ* that can be taken out by a pick without blasting is to be loose rock. But from a conversation which I had with Mr. Middleton, in which I asked him to explain his reason for having retained such a large amount of loose rock in boulders on one of his sections where I was then working, it appeared to me that the specification was rather perverted to mean that stuff of a stony nature which had to be excavated or broken up by a pick should be classified as loose rock, as he endeavoured to prove that the specification would bear such a construction.

"But besides the line cuttings there are numerous portions of ditches, even bog ditches, from which the engineers say by their books that a very large quantity amounting to tens of thousands of yards of boulders, classified as loose rock, were taken and deposited in the embankments, or elsewhere out of the ditches. In these cases also there was no measurement of the boulders, though the true quantity could have been easily ascertained—the same system of a percentage varying from 5 per cent. to 25 per cent. of the whole contents of that portion of the ditch in which they lay having been carried out. These boulders were deposited by ice, or by some other natural agent, in a comparatively uniform layer on a kind of quicksand or silt, under peat, and lay sometimes almost closely together, and sometimes considerably separated one from another, but were always capable of actual measurement. As there is scarcely anywhere the slightest trace of any boulder from such ditches of a size so great as even one cubic foot having been deposited in embankments; and as in very many cases there is no appearance of the boulders now lying in the ditches having ever been moved since they were deposited there by nature, and as in general, if not universally, boulders of a size much smaller than fourteen cubic feet and down to less than half a cubic foot are still lying in the

ditches evidently undisturbed; where the engineers have returned 'loose rock' boulders to the extent of 10, 15 or 20 per cent. of the full size of that part of the ditch, it is impossible for me to believe that any boulders of a size approaching to nearly fourteen cubic feet, are hidden in the embankment (as one of the engineers gave it in his evidence, when he said it was impossible for him to know what was in the embankment), and that the little ones are left behind in the ditch where they can still be seen. This system of paying for loose rock in bog ditches where the boulders still lie undisturbed was carried out not simply in a few isolated cases, but almost all over four-fifths of the length of the contract.

"There is still another case in which too large an amount of loose rock in boulders has been allowed by the engineers. Some portions of embankment, where enough ordinary earth or peat was not readily obtainable, were made up of boulders gathered in the immediate vicinity, and the amount was calculated by means of the cross-sections for the completed embankment. One of these portions I remember particularly well. A very large area of ground was covered with boulders, and there was within an easy distance much more than enough of boulders less than fourteen cubic feet to make the required embankment, and as the boulders used were undoubtedly carried on hand barrows (one of which was lying at the slope of the embankment at the time of my measurement) which was the only practicable means of carrying them, it is not likely that the workmen searched for stones of a ton weight (thirteen cubic feet) and left smaller ones lying convenient to the work. But I had occasion to cut into the embankment at several places within four hundred feet long, and from the examination then made I do not believe there were any 'loose rock' boulders put into the embankment. But the cutting into this embankment laid bare the fact that though the quantity of loose rock returned by the engineers in charge was for the embankment completed to its full cross-section, the boulders formed merely a core in the middle just big enough to support the sleepers and track, the rest of the cross section being filled up with ballast. I had better illustrate this by a sketch:



"The portion 'A' is all that was made of boulders, the portions 'B B' were made up of ballast. The full size of the embankment 'A' and 'B B' was estimated by the engineers as made up of loose rock and paid for as such, while the portions 'B B' being made of ballast, which was paid for according to the measurement of the quantity that was taken out of the pits, without reference to where it was deposited, were thus doubly paid for, first as loose rock at 90 cts. per cubic yard, and second as ballast at about 30 cts. per cubic yard. This portion of embankment is near the second diversion of the Oskondaga River.

"In several cases the engineers have allowed a large quantity both of loose and solid rock for boulders lying partly above the general surface of the ground. To ascertain as nearly as possible the true quantity to be allowed in each of such cases I measured, individually, all the boulders above the general surface of a large area of the adjoining ground, and I made my estimate accordingly, arriving at a quantity vastly less than that allowed by the engineers.

"There are two kinds of work called by the name of rip-rap—one, rip rap proper for protecting the slopes of embankments from the action of water; and the other, the material

used to fill stone drains (trenches filled with stones). As far as the *quantity* of the latter class is concerned, I have nothing of importance to say, but inasmuch as the specification says that when any material taken from a cutting is used and paid for in a higher class of work its value in the cutting is to be deducted; as I believe that all the stones used in these stone drains were undoubtedly taken out of the cuttings and paid for as rip-rap in the drains; and as there is not in the books of the engineers an instance of the value of the stones in the cuttings being deducted; I believe a very large deduction should be made on this account from the estimates of the engineers; but I did not feel that I could positively affirm that the stones, or what part of them had been taken out of the cuttings, and therefore I did not make the deduction.

"In the other kind of rip-rap—namely, that for the protection of embankments from water—I believe I deducted all that the engineers had returned, as the work was practically worthless, and as there was not in any case more than the slightest attempt at building up the stones, which were merely dumped over the sides of embankments in the same way as in numerous cases boulders and solid rock from cuttings were dumped over as waste. In one short piece about 100 feet long, the stones which were taken from an adjoining rock cutting seemed to have been laid with some care, but in reality they are part of the embankment within the regular dimensions; and they are now covered with ballast put over them so as to make the top of the embankment of the proper width, and the ballast, which is sand, runs out into the water, from which rip-rap was supposed to protect the embankment. In another place not far from that just mentioned, a piece of so-called rip-rap is returned by the engineer in charge of that section as having been built twice because it had been washed down and rebuilt, but when I saw it it was merely a loosely-built plumb wall, built about under the ends of the sleepers, barely sufficient to retain the inner filling of the embankment and support the road. After my inspection of it and before my leaving the work it was covered over with sand ballast and stumps which, as in the last mentioned case, ran out unprotected into the waters of Hay Lake.

"In very many cases, petty perhaps in detail but of considerable importance in the aggregate, and clearly indicating the system pursued on the contract, the contractors were paid by a suppositious quantity of rock or earthwork for work done of a totally different nature—such, for instance, as that already given where a certain number of cubic yards of rock were allowed by the engineers for hauling out the boulders from cuttings, the removal of which boulders having been already allowed for in their measurement in excavation; the "fighting of fires" paid for by a number of yards of earthwork, the fires having been caused by sparks from the contractors' engines and men, the contractors by their contract being solely responsible for such damage; the paying by a certain quantity of rock excavation for the building up, with stones from a neighboring rock cutting, of the burned ends of a wooden culvert, burned, undoubtedly, through the agency of the contractors' workmen; the paying by a certain quantity of rock excavation for the removal of large blocks of rock from a ditch into which they had been thrown by the blasting in a neighboring rock cutting, which blocks, however, it was plain to be seen were never removed, but a small trench, in fact, was cut to let the water of the ditch pass them—even if the blocks had been removed the contractor should have removed them at his own cost.

"My instructions were to measure the work done, so as to test the accuracy of the engineers' returns; but in doing this I could not avoid taking notice of great extravagance in the

amount of work done ; and I think it right to call the attention of the Commission to what I have to say.

"The contract required the contractors to haul all stuff in the line-cuttings as far as it was required in the embankments, to an ultimate length of 1,200 feet, without any charge for extra haul ; but the haul seldom or never was allowed to reach half the ultimate length before the contractors began to waste the stuff out of the cuttings, and to borrow other stuff to make up for the deficiency caused by the waste. As a rule, nearly all the boulders in clay cuttings and all the rock in rock-cuttings were wasted—that is, they were generally dumped out on the sides of the embankments, frequently outside of the specified width of embankments ; but sometimes they were scattered over a wide area of the adjoining lands. One cutting of 7,000 cubic yards, at Hay Lake, could have all been put into the adjoining embankments without the haul exceeding 600 feet, and it could all have been put into one of the embankments, and still the haul would not have reached the limit of 1,200 feet ; but the stuff in the cutting was all wasted, and other stuff was borrowed to take its proper place.

"Of off-take drains there are very many which, in my opinion, are utterly uncalled for. Off-take drains are not necessary, except when a great accumulation of water in the ditches would be injurious to the works. Vast numbers of these off-takes are in places such as flat, boggy ground, where no such accumulation could occur ; yet in such flat, boggy ground (flat as shown by the length to which it was necessary to make the off-takes to obtain a few feet of fall,) off-take drains are made of lengths up to nearly a mile for the purpose of lowering the water in the railway ditches a foot or eighteen inches.

"In one place, at the deepest part of a little clay cutting, there is a large off-take drain made on each side of the railway, where a small culvert would have rendered the cost of one unnecessary.

"In several cases the deepest part of a rock cutting is selected as the proper place for cutting through the slopes of rock and making an expensive off-take, when all the water that can possibly pass through it, could be conveyed down the water-tables in the sides of the rock-cutting for a very small fraction of the expense incurred.

"In one case, where it is impossible that any but a very small quantity of water can ever pass through a stone drain built there, an excavation was made 80 feet long, 15 feet wide and 5½ feet deep, and double measurement was allowed for the excavation on the plea that water had to be contended with in the excavation—and this excavation was filled up with large and small boulders from an adjoining gravelly cutting, which boulders were paid for as rip-rap ; all which excavation and rip-rap were unnecessary as the embankment there is made of such material as would allow all the water that can ever be there to readily pass through it without the slightest injury to anything ; and the weight of the embankment on a soft bed was sufficient to make enough of depression without any excavation. This drain cost, as well as I remember the prices, very nearly \$1,000, an unnecessary expenditure.

"In another place a borrow pit, 500 or 600 feet long, was made on the high side of the railway. The bottom of the pit could, for a few dollars, have been easily drained, so that any accumulation of water in the pit would have been perfectly harmless to everything ; but no less than three stone drains (the stones paid for at \$3.50 per cubic yard) have been built under the embankment, and short off-takes made from them ; and, besides, there is a catch-water drain about 800 or 1,000 feet long, made round the borrow-pit so as to prevent all water from getting into it. One end of this catch-water drain leads into the ditch of the adjoining embankment, while the other end is made through about 100 feet of solid rock, and then

across the railway by a box culvert built in solid rock, for the excavation of which double measurement was allowed, because, as said, of water having to be removed during the excavation; with regard to this removal of water, the engineers and contractors must have selected a very wet time for the excavation, for at the time of my measurement, then (June) there was little more than a trace of water in the culvert and approaches to it.

"In another plan where extensive borrow-pits of peat have been made, and a great deal of the rock from a rock cutting has been wasted on the sides of the peat embankment, whereby the embankment is made about twelve feet wider than what the specification requires, a stone drain has been built, through which water from the borrow-pits flow and spreads out over the swamp on the other side of the railway; a second culvert has been built about 100 yards off, draining the same borrow-pits, but there is a long off-take from it beginning in a cutting of slippery clay, eight or ten feet deep at the deepest, and about thirty or forty feet wide at the top, and carried down many hundred feet in length. The fact of the first mentioned culvert doing the same work, carrying the water across the railway, and then letting it spread out through the bush without any possible injury to anything, shows that at least the expensive and troublesome off-take at the second culvert is unnecessary.

"In another place a long, deep ditch has been made alongside the track, and several thousand cubic yards of easily excavated coarse sand taken from it and wasted. This ditch is said to have been made for the purpose of drawing off the water from a lighter portion of the same ditch. It can be plainly seen that the natural cause for this drainage is in the opposite direction from that adopted, and that by an expenditure of not more than two dollars the ordinary railway ditch would have been made to carry the required drainage by its natural course, more effectually than this large ditch, which cost over \$1,000.

"In addition to these cases of unnecessary extravagant expenditure, I may mention the tunnel—though any one may see by the profile there was a useless waste of money there. For this tunnel there was no price in the contract, but it was paid for by private arrangement at \$9 per cubic yard, amounting to about \$70,000 altogether. The price for solid rock cutting is given in the contract at \$1.50 per cubic yard; and the cost of an open cutting, instead of the tunnel would have been about \$35,000 or \$40,000, so that there was there an expenditure of at least \$30,000 that could have been saved to the country.

"I made no estimate of the work which I class as unnecessary and extravagant, but I am inclined to believe that it, including the tunnel, has amounted to between \$80,000 and \$100,000, besides the \$245,000, which I say is a correct estimate of the excess, due to the engineers' measurements and classification over what is right and just.

"I am sorry I have not kept a copy of any of my memoranda, which, as written in the field, are deposited in the Department of Railways and Canals. The cases mentioned are only a few that I can now quote from memory. There are hundreds given in my memoranda, but these will no doubt be sufficient to show the system pursued on this contract, and though I cannot now locate the cases, I feel sure the engineers in charge will have no difficulty in locating them from my description. I am sorry also that the circumstances which I have mentioned at the beginning prevent my giving my evidence in the usual way, when the matters referred to could be thoroughly examined, but I trust the Commissioners will accept my evidence in the only way in which I can now give it, and accept it as a true and unbiassed statement, as it is.

"I have the honour to be, Sir,

"Your obedient servant,

"To N. F. DAVIN, Esq., Secretary,
"Canadian Pacific Railway Commission, Ottawa."

"LEONARD G. BELL

EXHIBITS.

The exhibits put in during the examination of witnesses, up to No. 324, are sufficiently described in the evidence, and all not hereinafter more particularly accounted for, have been returned to the Department of Railways and Canals.

Those which have been sent to the Department of the Secretary of State have S placed over against them in the right hand column; that an exhibit has been returned to the witness who put it in, is indicated by the letter R.

No. of
Exhibit.

85.	Copy of agreement between Whitehead, Sifton & Ward.....	S.
86.	Rowan to Carre, June 22nd, 1877.....	S.
87.	“ “ 30th, “	S.
88.	“ August 8th, 1876.....	S.
89.	“ July 31st, 1878.....	S.
90.	Carre to Fleming, Nov. 9th, 1874.....	S.
91.	Carre's statement of quantities.....	S.
92.	Rowan to Carre, July 22nd, 1878.....	S.
93.	Whitehead to Hon. D. McDonald (mortgage).....	R.
94.	Statement of advances made by Hon. D. McDonald.....	R.
95.	“ account between Hon. D. McDonald and J. Whitehead... ..	R.
96.	Smith to Whitehead, Sept. 20th, 1880.....	R.
97.	Articles of agreement, J. Whitehead and Fraser & Grant.....	R.
99.	Letters of Nixon to Molloy (claim).....	S.
102.	Moberly's Private Report to Fleming.....	S.
103.	Advertisement Weekly Mail, Nixon's Purveyorship	S.
110.	The <i>Free Press</i> , Dec. 19th, 1878.....	S.
114.	Carre to Fleming.....	S.
115.	“ Rowan.....	S.
136.	Whitehead's release to Mackintosh.....	S.
137.	Letter of Whitehead to Mackintosh as to sums paid.....	S.
218.	Tender B, Contract 42.....	S.
221.	Memorandum of agreement, Andrews, Jones & Co. and Morse.....	S.
222.	Telegram, Jones to McDougall.....	S.
226.	Agreement, Morse to Close.....	S.
227.	“ Morse & Co. and P. S. Close.....	S.
228.	Telegram, Fleming to Waddle.....	S.
229.	Waddle to Hon. A. Mackenzie.....	S.
230.	Fleming to Waddle.....	S.
231.	Agreement between Waddle and Perry.....	S.
232.	Glass to Waddle, telegram.....	S.
243.	Copy of agreement between Manning & Shields and P. G. Close.....	S.
286.	Telegram, J. N. Smith to J. D. Morse.....	R.
287.	“ “ “	R.
288.	“ Morse & Co. to J. N. Smith.....	R.
289.	J. D. Morse to A. J. Thompson.....	R.

ALPHABETICAL LIST OF WITNESSES EXAMINED.

Alloway, W. F.

Bain, John F.

Bannatyne, A. G. B.

Birrell, James.

Boulton, Alfred.

Bowie, Alexander.

Bown, Walter R.

Braun, Frederick.

Brown, George.

Brown, P. J.

Burpé, T. R.

Caddy, John S.

Campbell, George.

Campbell, H. M.

Carre, Henry.

Chapleau, S. E. St. O.

Clark, Albert H.

Close, P. G.

Conklin, Elias G.

Connors, John L.

Cooper, James.

Currie, D. S.

Davidson, Joseph.

Drope, T.

Drummond, Henry M.

Fairman, Frederick.

Fellowes, G. R. L.

Fleming, Sandford.

Forrest, H. F.

Fraser, James H.

Fuller, Richard.

Goodwin, James.

Haggart, John.

Hespeler, William.

Horetzky, Charles.

Jarvis, Edward W.

Jennings, Wm. T.

Kavanagh, Joseph.

Kavanagh, Timothy.

Kelly, Patrick.

Kirkpatrick, Wm. W.

Little, Wm. B.

Luxton, Wm. F.

Lynskey, Thos. J.

Macdonald, A. P.

Mackenzie, Hon. A.

Mackenzie, Chas.

Mackintosh, C. H.

Manning, Alexander.

Marpole, Richard.

McCormick, Andrew.

McEwen, Alex.

McDonald, John J.

McIlvaine, Samuel.

McLennan, Roderick.

McNicol, Edmund.

McRae, Wm.

McTavish, George L.

McQueen, A.

Mills, D. O.

Moberly, Walter.

Molesworth, Arthur N.

Molloy, John.

Morse, J. D.

Mulholland, John H.

Murdoch, Wm.

Nicholson, Frank.

Nixon, Thomas.

Nolin, Augustin.

O'Donnell, Hugh.

O'Loughlin, Macroy.

Parr, John.

Pope, Hon. J. H.

Reynolds, Thomas.

Rowan, James H.

Ruttan, Henry N.

Ryan, James.

Ryan, John.

Ryan, Hugh.

Schreiber, Collingwood.

Schultz, John.

Shields, John.

Sifton, John W.

Smellie, W. B.

Smith, Col. W. O.

Smith, J. W.

Smith, Marcus.

St. Jean, Dr.

Stephenson, Rufus.

Strang, Andrew.

Stronach, John.

Sutherland, Hugh.

Sutherland, James.

Sutherland, Peter.

Sutton, R. T.

Thirtkell, John.

Thompson, M. M.

Trudeau, Toussaint.

Tupper, Sir Charles.

Tuttle, Charles R.

Waddle, John.

Whitehead, Charles.

Whitehead, Joseph.

Wilson, G. M.

The evidence of the above witnesses was given under oath, and reported at the time in shorthand by either Mr. A. Holland, or Mr. G. C. Holland, both sworn reporters.

BINDING SECT.

MAR 29 1972

Gov. Doc. Canada. Canadian Pacific Can mission on the, 1880-18 Com Report. C Vol. 3.- Conclusions.		NAN
DATE.		
02/2/51	Wood	
1-19/50	298	
11/5/55		
1 April 1971	Don C. Pugh	

